THE

HISTORY OF THE MIDNÁPUR RÁJ.

THE

Y OF THE MIDNÁPUR RÁJ.

COMPOSED

BY

RAJAH MOHENDRO LALL KHAN,

ZEMINDAR OF

MIDNÁPUR AND NÁRÁJOLE, &c.

CALCUTTA:
THACKER, SPINK AND CO.

1889.

929.2
k45

CALCUTTA:
PRINTED BY THACKER, SPINK AND CO.

DEDICATED

(By Permission)

To

The Honorable Sir S. C. Bayley, K.C.S.I., C. S., &c., &c.,

Lieutenant-Governor of Bengal,

By

His Most Humble Servant,

RAJAH MOHENDRO LALL KHAN.

PREFACE.

In offering this history of the Midnápur Ráj to the public, I think it necessary to say a few words by way of preface.

The narrative described in the following pages is based on materials derived from family traditions and also from some legends of a mythological, rather than of a true historical character, and the reader is at liberty to take them at what they are worth. A genealogical table of the family of the author, a judgment of the Sadar Dewani A'dálat and other important matters, which, it is thought, will be interesting but at the same time may encumber the text and impede the flow of the narrative, if inserted in the body of the work, have been thrown into a number of appendices at the end. A short account of the Nárájole Zemindary, the original possession of the author's ancestors, is also given. The vicissitudes of fortune, as illustrated in the Midnápur Ráj, will, it is hoped, prove interesting and instructive to the general public.

THE AUTHOR.

BENGAL SECRETARIAT LIBRARY

THE

HISTORY OF THE MIDNÁPUR RÁJ.

CHAPTER I.

THE Midnápur Ráj is very ancient, its origin being lost in antiquity. (See Appendix A.) Of its early history all that is known is that it was a feudatory state under the King of Orissá. For it appears that Ráják Surat Sing (Khárrá Mági) ruled as governor of the Ráj under that king, when Suliman, the Afghan Chief of Bengal, invaded that province.

Lakshman Sing, the Dewan and Commander-in-Chief of Surat Sing, with the assistance of the King of Orissá, defeated and slew his master and took possession of his Ráj. (See Appendix B.)

Afterwards he was driven away by his younger brother-Syam Sing, who held the Ráj from 1068 to 1074. (B. S.) During the lifetime of Lakshman Sing, his son, Purushotum Sing, and his grandson, Sangrám Sing, both died, the latter leaving three sons, Chhotoo Roy, Raghunáth Roy and Durgá Dás Roy. Resenting the ill-treatment of their great grandfather by Syam Sing, they made war upon him in 1075 (B. S.) and defeated him; whereupon the eldest of them, Chhotoo Roy, took possession of the Ráj. He dug a very large tank in Hooddá Dogechhiá which still goes by his name. He died in 1077 (B. S.).

On the death of Chhotoo Roy, his brother Raghunáth Roy, assisted by his son Beer Sing and his nephew Jogee Mohápátra, the son of Durgá Dás, managed the affairs of the Ráj.

In the year 1100 (B. S.) Ráják Rám Sing, son of Ráják Raghunáth Roy, took possession of the Ráj. He

distinguished himself by his good services to the then existing Government. His name appears in Marshman's History of Bengal, Chapter XIII, page 163.

He built two fortresses, Karnagarh and Awásgarh, the former being situated at a distance of about six miles north of the town of Midnápur (See Appendix C.), and the latter forming the northern boundary of that town. (See Appendix D.) He excavated also a large tank at Keshpur which still exists and is called Rámságar. He had an army of 12,000 men. (See Appendix E.)

He was succeeded by his son Ráják Jeswanta Sing in 1118 (B. S.). During the lifetime of his father he gained great renown in the service of Nawab Moorshid Kuli Khán. In 1734 he was appointed under Serferáz Khán the nominal governor, Dewan of the province of Dáccá, which he raised to a most flourishing condition by his wise and able administration, as appears from Chapter VIII of Marshman's History of Bengal.

There is a tradition that the family god Siva Linga Dandeswar and the goddess Mahámáyá, pleased with the devoutness of Ráják Jeswanta Sing and the depth of his religious fervour, appeared before him, and the goddess blessed him by placing her hand upon his head, which received and retained the mark of her five fingers.

It is said also that the Ráják of Visnupur, with a large army, in company of his family god Madan Mohan, suddenly attacked Ráják Jeswanta Sing, who was at the time deeply engaged in devotions before the goddess Mahámáyá. Jeswanta's soldiers waited for a long while, but as he did not come out to lead them to battle, they lost heart and fled away. Upon this, the enemy entered the outer part of the fort, without meeting with any opposition. The tumult, caused by them, at last roused the king from his religious abstraction, and finding himself deserted by his soldiers, and, therefore, quite helpless, he prayed to the goddess with all his heart for

assistance in this emergency. The goddess, well pleased with his prayer, herself mounted on horseback and exclaiming, "Fear not," "Fear not," met the enemy's troops and began to destroy them. After annihilating the hostile force she fought with Madan Mohan whom she totally defeated and thus the battle ended in the defeat and flight of the Visnupur Ráját and his family god Madan Mohan. A short account of this event is preserved in a ballad composed by the then celebrated poet Rámeswar Bhattácháryya, a courtier of Ráját Jeswanta Sing. (See Appendix F.)

In 1155 (B. S.) Ráját Jeswanta Sing died. At this time the revenue payable to Government for Parganáh Midnápur was Rs. 29,463-10-11-2, for the town of Midnápur Rs. 946-10-4, for Parganáh Manohargarh Rs. 387-1-10, for Parganáh Dhenkiábázár Rs. 6,894-9; for Parganáh Báhádurpur Rs. 2,434-12-16, amounting in all to Rs. 40,126-12-1-2.

CHAPTER II.

Ráját Jeswanta Sing was succeeded by his son Ráját Ajit Sing, who died childless in 1162 (B. S.) leaving two widows Ráni Bhabáni and Ráni Siromani behind him.

During the time they held the Ráj, the army was reduced to a state of inefficiency and disorder. The Chooárs inhabiting the jungles, taking advantage of this state of things, gathered in large numbers in various places and committed depredations upon their peaceful neighbours.

One of the leaders of these Chooárs, Gobardhan Digpoty, became very powerful, and made frequent inroads into the Ráj, which soon compelled the Ránis to fly from their residence at Karnagarh.

Finding no succour at hand, they sought assistance from Trilochan Khán (See Appendix G.) the zemindár of Nárájole and the first maternal cousin of Ráját Jeswanta Sing.

The place where Trilochan Khán met the Ránis still passes by the name of Ráni Pátná.

In 1165 (B. S.) the Ránis entered into an agreement with Trilochan Khán by which it was arranged that the latter should be the manager of the estates of the widows during their lifetime and that on their death he should have exclusive possession of the Ráj. In accordance with this agreement, Trilochan set to work and soon reduced the Chooárs to submission.

In 1167 (B. S.) the elder widow, Ráni Bhabáni died, Trilochan also died soon after, on which Matirám, the son of his eldest brother, took over the management of the estate, and on Matirám's death in 1168, Sitárám, the eldest son of Trilochan's second brother, succeeded him and successfully managed the estate till 1189 (B. S.) In 1190 (B. S.) untoward circumstances overtook them both. The British Government in that year assessed the Revenue of the Midnápur zemindáry at Rs. 1,11,797-8-8.

As the resources of the zemindáries at that time were scanty, the assessment was too heavy for the Ráni to pay. Default of payment of revenue taking place in consequence, the Government in 1197 (B. S.) took the property under *khás* management, with the exception of such lands, as had been given away as jaigirs to the Ráni's servants, Brahmins, &c., *i. e.*, lands which were styled Niz Nawázemát. A like fate befel Sitárám. The Government enhanced the revenue of Nárájole, which Sitárám did not agree to pay, consequently it took *khás* possession of Nárájole. Sitárám died at Karnagarh in 1191 (B. S.)

He had three sons, Ananda Lal, Nanda Lal, and Mohan Lal. The eldest Ananda Lal, whom Ráni Siromani loved as a son, remained always with her. In 1193 (B. S.) he obtained possession of his paternal zemindáry of Nárájole under a new settlement from Alla Siccá Rs. 8,513 to Company's Rs. 13,333-10. (See Appendix H.) But at this time the Ráni

fell into troubles. Her troops, who were now dismissed and deprived of their jaigirs by the Government, began to oppress and plunder the surrounding country. The Government, thinking that she was at the bottom of this lawlessness of her disbanded soldiery, sent a body of troops to imprison her in her palace at Karnagarh. All deserted her in the hour of need except Chuni Lal Khán, the uncle of Ananda Lal who stood by her to the last. The soldiers entered the fort of Karnagarh and began to plunder the jewels and other valuables of the Ránis ; but she, without offering the slightest resistance, surrendered herself with Chuni Lal to the Commander, who treated them with much kindness. The Commander after keeping them for three or four days in the fort of Awásgarh in Midnápur, and allowing them at their request to have an interview with Ananda Lal at Nárájole, sent them to Calcutta where they were thrown into prison. Ananda Lal did every thing in his power to have their innocence proved, and they were acquitted in 1799 by the Sadar Nizámut Court.

The Government restored to the Ráni, in June of the same year, 28 muskets, with shot, one elephant and one gold Hooká which it had seized. She then left Karnagarh and went to reside at Awásgarh, where she spent the remainder of her life.

The rent of the Midnápur zemindáry was not then collected in coin but in kind, that is, the ryots used to pay their rents to the zemindár by giving him a part of the produce of their fields. The *Paiks* who held the *paikán* lands did not pay even their fixed quit rents. Owing to these circumstances it was difficult for the Ráni to collect from the ryots even the amount of revenue payable to Government. Considering all these facts the Government reduced the revenue formerly assessed upon the estate, from Rs 1,11,797-8-8, to Rs. 85,000. Unwilling, however, to accept these terms on her own behalf, she gave away to Ananda Lal Khán the zemindáry of Midnápur consisting of four parganáhs, by a deed

of gift dated the 30th of June 1800 (27th of Ashár 1207 B. S.) which was registered on the 30th of July following, and made him Ráják. Accordingly Ananda Lal becoming the master of the whole Ráj brought it completely under his control. He ruled peacefully up to 1212 B. S. (1805), but at the end of that year Ráni Siromani, at the instigation of her evil advisers, quarrelled with and brought a suit against him, to recover possession of the aforesaid Ráj. While the suit was pending, Ananda Lal died in the month of Jaistha 1217 B. S. (1810) without leaving any issue. He executed a deed of gift (Hebánámá) in respect of the four parganáhs contained in the Midnápur Ráj, in favor of his youngest brother Rájáh Mohan Lal Khán and by another deed of gift (Hebánámá) gave away to his second brother Nanda Lal Khán the ancestral zemindáry of Nárájole, &c.

After the death of Ananda Lal Khán, Rájáh Mohan Lal Khán was made a party to the suit as his heir and representative. But the Ráni won the case by a decree of the Sadar Dewáni Adáwlat, dated the 31st day of August 1812, on an appeal from the decision of the Provincial Court, dated the 30th March 1811. The principle, upon which the decision of the Appellate Court was based, was "that a Hindu widow cannot, under any circumstances, alienate the whole landed estate devolved on her by the death of her husband, nor can she alienate a part, except under special circumstances, without the consent of all the heirs of the husband, notwithstanding she may have obtained the consent of the nearest heirs; and a deed of gift, executed by her in favor of a stranger to be valid, must be attested by all the heirs of her husband, as consenting parties." From this decision, Rájáh Mohan Lal Khán appealed to Her Majesty's Privy Council in England, the estate in the meantime remaining under the management of the Collector of Midnápur on behalf of the Court of Wards.

Ráni Siromani died on the 4th Aswin 1220 B. S. (17th of September, 1812). Soon after her death, Kandarpa Sing,

a kinsman, seven degrees removed from the late Rájáh Ajit Sing, claimed the Ráj and alleged that, on the day before her death, she had executed in his favor a deed of gift in respect of the four parganáhs forming the Midnápur Ráj. Mohan Lal Khán also claimed to be entitled to the zemindáry, founding his claim on the deed of gift in his favor to which all the persons alleged by him to be the heirs of Rájáh Ajit Sing were consenting parties.

CHAPTER III.

On the 25th September of that year, the Collector of Midnápur called upon Rájàh Mohan Lal Khán, Kandarpa Sing and others having claims to the zemindáry, either by inheritance or by any other right, to present petitions to the Judge of the Zillah.

Rájáh Mohan Lal Khán and Kandarpa Sing, having accordingly presented their petitions, the Judge proceeded to a summary trial of their respective claims and on the 24th December 1813, recorded his opinion as follows:—

First.—That the deed under which Kandarpa Sing claimed was fabricated after the death of the Ráni ; and that the right of Kandarpa Sing to the property was not proved or established either by deed or by hereditary rights according to the Shástrás.

Second.—That according to the Vyavasta entered in the decree of the 31st of August 1812, the sons of Rájáh Ajit Sing's maternal uncle were his heirs, and after the demise of the Ráni entitled to the zemindáry.

Third.—That those heirs had transferred their hereditary rights in the property to Rájáh Mohan Lal Khán.

Fourth.—Notwithstanding these circumstances, pending the appeal of Mohan Lal Khán to England, the zemindáry should remain in the custody of the Court of Wards.

This proceeding having been transmitted to the Sadar Dewáni A'dálat for information and orders, that Court on the 14th of February 1814 after noticing the reasons for not prosecuting the appeal and that the authority of the Court of Wards had ceased considered it to be right and proper that the Judge of the Zillah Court should give effect to this summary decision ; and that if, on consideration of the particulars set forth in these proceedings of the 24th of December 1813, he considered Mohan Lal Khán to be the person entitled to be the Malik of the zemindáry, and if Mohan Lal Khán were able to give security for confirming the decree of the Privy Council or for satisfying other claims, he might withdraw the zemindáry from the custody of the Court of Wards, and put it into the possession of Mohan Lal Khán.

The result of these proceedings was that Rájáh Mohan Lal Khán obtained possession of his zemindáry.

Afterwards there was a full crop of litigation between these two rival claimants. Finally the Judicial Committee of Her Majesty's Privy Council pronounced judgment in favor of Rájáh Mohan Lal Khán on the 3rd December 1827. Their Lordships held, affirming the judgment of the Sadar Court, that "upon a claim to the inheritance of a zemindáry, situated in Midnápur, which had been held in possession, for a long period anterior to the institution of the suit, by a family of Sut-gope Brahmins, who had migrated from Bengal to Midnápur, but had retained their laws and performed their religious ceremonies, according to the *Dáya-bhága* and other authorities in force in Bengal, the *Dáyabhága* must govern the descent, and not the *Mitakshará*, which prevailed in Midnápur. They further held that a deed of gift of the zemindáry to a stranger, by the widow of the zemindár, last seized of the property, who died without issue, which gift was made without the confirmation of the *Bandus* (mother's brother's sons), who were the heirs was valid under the

Dáyabhága as against a party claiming the succession according to the Mitakshará, as being descended in the seventh remove in the male line from the common ancestor.

CHAPTER IV.

Before the final decision of the case by the Privy Council, noted above, Ráját Mohan Lal Khán, who was a very able, kind and good-natured man, died in the month of Falgoon 1237 B. S. (February 1830). (*See* Appendix I.) He left six sons by his two wives, Ráját Ajoodhyaram Khán, Rámjoy Khán and Brojokishore Khán, being the sons of the elder Ráni Kundalatá, and Ram Chandra Khán, Hridoyrám Khán and Ram Kamal Khán being born of the younger Ráni Rangalatá. When Ráját Mohan Lal Khán died, all his sons were minors.

By a deed of gift dated the 19th of Falgoon 1237 B. S. (February 1830) he conferred upon his eldest son, Ráját Ajoodhyaram Khán, all his property and made him Ráját, appointing the two Ránis as guardians, and his uncle Chuni Lal Khán as Sarbarákár. Chuni Lal Khán died soon after, whereupon his son Srimanta Lal Khán was appointed in his father's place with the consent of the Ránis.

Soon after a misunderstanding arose between the Ránis, and they divided the Ráj into two equal portions between themselves.

In 1837, amidst the disorders which followed this difference between the Ránis, the Government Revenue fell into arrears, in consequence of which the Zemindáry was put up to sale; but as no purchaser was forthcoming, it was sold for one rupee, the Government bid.

In the following year, an Izárah lease of the Zemindáry was granted by Government to Messrs. Robert Watson & Co., for a term of 20 years.

After the sale the Ránis applied to have it set aside. At last in 1840 the Indian Government, sensible of the invalidity of the sale, restored the Zemindáry to the original proprietresses under the terms that Watson & Co.'s right under the lease in the Jungle-mehals was to remain intact ; but that their rights in the other properties comprised in the lease were to be transferred to the original proprietresses, and that all the rights of the Government were also to be given up in their favor.

Accordingly Messrs. Robert Watson & Co. obtained from the Ránis an Izárah lease of the Jungle-mehals for the remainder of the term of 20 years.

In 1841 Rájáh Ajoodhyaram Khán, attaining his majority, sued for the possession of the entire Ráj with all rights and privileges appertaining thereto, basing his claim on the law of primogeniture and custom which obtained in the family of the late Rájáh Ajit Sing. At last after a protracted litigation, on the 30th April 1844, by the decree of the Sadar Dewani A'dálat, he became the master of the whole Ráj, and brought it under his entire control. (*See* Appendix J.)

In consequence of the family dissensions which followed the institution of the suit by Rájáh Ajoodhyaram Khán and the mismanagement of the estate during his minority, this Ráj and many other properties became heavily encumbered with debts and were mortgaged in 1843-44 to Babus Ashutosh Deb and Promotha Nath Deb of Calcutta.

The mortgages not being redeemed, the mortgagees instituted a suit for foreclosure against the mortgager, which terminated in an absolute decree for foreclosure, dated the 20th May 1847.

Afterwards the mortgagees executed a conveyance of the mortgaged properties to one John Campton Abbott, who, not being able to pay the stipulated sum in full, paid down a part in cash, and for the remainder executed a mortgage bond pledging the property he purchased to his vendors, the

Debs. In October 1847 A. D., Mr. Abbott got full possession of the mortgaged property.

On the 29th of April 1848, this estate was sold for default of Government Revenue. The circumstances under which the sale took place are as follow: Mr. Abbott entered into an agreement with one Mr. McArthur, agent of His Highness the Nawab Nazim of Bengal, to default payment of the Government Revenue of the estate at the March *kist* of the year, and Mr. McArthur, on his part, promised to purchase it at Rs. 3,00,000. There was a further stipulation made by Mr. McArthur that, should the estate be sold at the auction for less than the sum agreed upon, he should pay the difference to Mr. Abbott. Both parties were true to their words. Mr. Abbott defaulted payment of the Government Revenue, the estate was put up to sale, and Mr. McArthur purchased it for Rs. 85,000, privately paying to Mr. Abbott the sum, by which the price it fetched at the auction fell short of three lakhs of rupees, from the funds of the Nawab Nazim. This fraudulent transaction forms one of the important events in connection with this estate, as will be seen later on in this history.

Three months after the Revenue sale, on the 31st July 1848, Mr. McArthur executed a deed of sale of that property in favor of one Sádak Ally Khan, a servant of the Nawab Nazim, who dying in March 1850, the estate passed into the hands of a eūnuch in the employ of the Nawab Nazim, named Seedee Nuzarally Khán who became the sole possessor of the estate under a conveyance executed by the Nawab on the 15th September 1851.

A fact which is worthy of notice and which has hitherto been omitted is the institution of a suit by Rájáh Ajoodhyaram Khán on 2nd February 1848, in the late Supreme Court of Calcutta at first against the Debs only, but afterwards, by successive amendments of the bill, against Messrs. Abbott and McArthur, the Nawab Nazim and the representatives of

Sádak Ally also to obtain a reopening of the foreclosure decree of May 1847. The result of this suit was that the decree of foreclosure was set aside on 16th November 1852, and the Master of the Court was ordered to make up the accounts of the mortgagee and the mortgager, and submit the same to the Court; as the Mahomedan defendants lived beyond the jurisdiction of the Court, the plaintiff obtained no relief under the decree.

Therefore Rájáh Ajoodhyaram Khán instituted a suit on the 31st May 1860, in the Zillah Court of Midnápur against the Nawab Nazim, Seedee Nuzarally, the then possessor of the estate, Messrs. Abbott and McArthur, Sádak Ally and the representative of the Debs, to set aside the fraudulent revenue sale. He contended that the default of payment of revenue, and the consequent sale of the estate by the Collector had been brought about by the collusive arrangement come to between Messrs. Abbott and McArthur with the intention of defrauding him. Under these circumstances he urged that the provisions of Act I of 1845, did not apply. But the Judge, on the 26th November 1860, dismissed the case, on the ground that his right of action was altogether barred.

Rájáh Ajoodhyaram Khán then appealed to the High Court from the Judge's decision. The division bench which heard the appeal was of opinion, that the judgment of the Court below, was wrong, inasmuch as the provisions of the Revenue law were never intended to cover a fraud, and so, would not prevent an owner who had been fraudulently deprived of his property by a Collector's sale fraudulently effected as against him, from pursuing that property, with a view to enforcing against the holder of it, any equitable right to a re-conveyance to which the defrauded owner was entitled. On this ground it remanded the case to the lower Court for trial on its merits. The order of remand was made on the 1st June 1863, and confirmed on revision on the 12th January 1864. (*See* Appendix K.)

The defendants appealed to the Privy Council against this order of remand, but without success, for their appeal was dismissed and the decision of the High Court affirmed by a judgment of that Judicial authority delivered on the 17th March 1866. (*See* Appendix K.)

The hearing of the case on remand came on before the Zillah Judge of Midnápur, who, on 29th September 1866, gave a decree in favor of the Rájáh, declaring him entitled to the possession of the estate in dispute, upon settlement of accounts, by redemption of the mortgage.

Against this decision, the defendants appealed to the High Court. On the 4th September 1867 that Court affirmed the decision of the Zillah Judge of Midnápur and dismissed the appeal with costs. (*See* Appendix K.).

In 1867, according to the decision, Rájáh Ajoodhyaram Khán, judgment creditor, applied to the Judge of Midnápur for execution filing an account of the sum due to him. On 2nd April, 1868, the Judge declared that, after complete satisfaction of the mortgage-debts, the judgment creditor will receive from the judgment debtor, Seedee Nuzarally Khán, the mesne profits with interest amounting to Rs. 21,99,225-3-9. Against this decision the judgment debtor applied to the High Court, which remanded the case to the Court of the Zillah Judge on the 3rd February 1870, for trial.

Re-trying the case on the 8th August 1870, the Judge of Midnápur declared that the amount due upon an adjustment of accounts by the judgment debtors, Seedee Nuzarally Khán and others, to the judgment creditor, Rájáh Ajoodhyaram Khán, after complete satisfaction of the mortgage-debts, was Rs. 16,62,937-7-0 being the profits of the Zemindáry with interest up to the 16th September 1869.

Then the judgment debtors appealed to the High Court from the Judge's decision. The case however was amicably settled, and in September 1870, Rájáh Ajoodhyaram Khán ob-

tained peaceful possession of the Midnápur Ráj, free of all encumbrances.

By this protracted litigation, Rájáh Ajoodhyaram Khán suffered a heavy loss. To carry on the suits he was compelled to part with rubies, diamonds, pearls and other precious heirlooms of the family at very low prices. The proceeds of the sale, however, proving insufficient for the purpose, and there being no other means of raising money, he at last accepted the terms offered by Messrs. Jardine Skinner & Co., managing agents of the firm of Messrs. Robert Watson & Co., and entered into an agreement with Messrs. C. B. Skinner, W. M. Matthewson and J. W. Laidley of the above firm on the 13th August 1866, to grant them, on receiving possession of his Zemindáry, a Patni lease of the jungle portions of Parganáh Midnápur or Bhanjabhum and Parganáh Bahadurpur, at an annual rental of Rs. 45,000, receiving Rs. 90,000 as *salámi* in advance. These portions of the aforesaid Parganáh which the company already held under an Izáráh lease from the mortgagee proprietor, Seedee Nuzarally Khán, contained 1,522 villages, the estimated area of which was 4,97,053, bighas and 8 cottas, and the annual income Rs. 1,23,988-15-0.

Besides Rs. 90,000 mentioned above, the Rájáh raised a further large sum by similar means to enable him to bring the litigation to a close. Most of this money was expended by his legal adviser and manager Bábu Bholanath Dutt of Calcutta, of which no detailed and full account has been rendered.

About three years after the Patni settlement mentioned above, Bábu Bholanath Dutt got a considerable portion of Parganáh Bahadurpur included in the Midnápur Ráj, transferred to himself. On the 12th July 1862, it had been settled that he should receive from the Rájáh (should the case be finally decided in favor of the latter) as remuneration for his services in conducting the suit, Rs. 20,000 in cash, and two

annas share of the profits the Rájáh would receive from the mortgagee after complete satisfaction of the mortgage-debts, or in lieu of this, Rs. 30,000 in cash. But dissatisfied with this arrangement, and as matters proceeded he insisted upon a higher remuneration, nearly double the original proposal, that is to say, Rs. 10,000 in cash, and land in the disputed estate, yielding a net annual profit of Rs. 7,200, or, in lieu of this, Rs. 90,000 in cash. The Rájáh, though unwilling, was obliged to acquiesce in this proposal, and accordingly, on the 8th October, 1869, conveyed to him the ten-anna share of the ownership of Parganáh Bahadurpur. As Messrs. C. B. Skinner & Co. held the Parganáh by a patni tenure, it was stipulated that he should annually receive from the patnidars Rs. 11,037 in cash, out of which he should pay Rs. 3,837-8 as Government revenue to the Collector of Midnápur.

Though, after so much trouble and expense, Rájáh Ajoodhyaram Khán obtained possession of the Midnápur Ráj from the mortgagee in September 1870, yet it did not bring him undisturbed peace and happiness. For soon after, he was involved in fresh lawsuits, of which it seemed as if there would be no end. Of these, two were most important: one, brought against him by the heirs of the sons of Rájáh Ajit Sing's maternal uncle for the property which had been bestowed on their ancestors for maintenance and which they had been deprived of by Mr. J. C. Abbott; and the other, by Ramdoyal Khán and others (sons of Srimanta Lal Khán and grandsons of Chuni Lal Khán) for the possession of the jungle portions of the Midnápur Parganáh (which had been given by a patni lease to Messrs. C. B. Skinner & Co.) on the basis of a false perpetual lease of Izárah, through the assistance of Roy Dhanapat Sing, a well-known banker of Azimgunge in the district of Moorshidábád. Both the cases were gained by the Rájáh in the Zillah Court of Midnápur, whereupon the plaintiffs appealed to the High Court;

but before the appeals came on for hearing the differences between the parties were amicably settled. Thus these and other suits terminated in favor of the Rájáh towards the close of July 1878. Rájáh Ajoodhyarám Khán, now freed from litigation and disturbance of every kind, and blessed with health of body and peace of mind, led a quiet and happy life in the midst of his family, spending his time in doing good to his fellow-creatures. But this happiness he did not long enjoy ; his days were numbered. A few days before his death, to place his affairs in as satisfactory a condition as possible, and as if to leave nothing desirable to be done by his successor, he negotiated with the Mahárani of Burdwan for the purchase of the ancestral zemindáry of Nárájole, the seat of his family, which had been sold for default of payment of Government Revenue on the 28th March 1853. On the evening of the 28th June 1879, he heard that the Ráni had accepted his terms and had executed a deed of sale on the 24th of that month, conveying to him the above zemindáry for Rs. 75,200. The news of this happy event filled him with joy and he retired to rest at midnight, as usual, without the slightest symptom of any disorder or indisposition ; but alas ! he rose no more ; his eyes were closed in the sleep of death. He passed away in peace and quiet, apparently, without tasting the pangs of death. On the next morning the discovery of his sudden death caused surprise and deep regret amongst his kinsmen and relatives and the people of Nárájole in general.

CHAPTER V.

Rájáh Ajoodhyaram Khán was born on the 8th February 1821 (21st Magh 1228 B.S.), and died on the 28th June 1879, in the 58th year of his age. His life, as will be seen from what has been said above, was for the most part spent in

quarrels with his step-brothers and nephews, and in carrying on litigation, which dragged its weary length for more than a quarter of a century, with diverse parties, to establish his claim to the Ráj. Though, during this time, he was often reduced to situations of difficulty and embarrassment through the machinations of his relatives and others who incessantly harassed him by involving him in litigation, yet, with a fortitude rarely found, he rose above the difficulties of his position and trusting in truth and in the justice of his claim, vigorously contested his rights and came off victorious. The firmness of his religious belief underwent no change even in his reverses. He remained as staunch and rigid a Hindu as ever. He had a strong confidence in the British Government, and was a most loyal subject of it. His humility and affability gained him the love of the officials of Midnápur who always treated him with kindness. On the 20th May 1863, he was permitted to retain possession of eleven cannon under the provisions of Section 4 of Act XXXI of 1860, by the order of His Honor the Lieutenant-Governor of Bengal; and on the 1st February 1877, on the occasion of the assumption of the title of Empress of India, by Her Most Gracious Majesty the Queen, a Certificate of Honor was presented to him in the name of the Queen-Empress for his liberality in supporting the Midnápur High School and promoting other charitable objects, and for the intelligent management of his large estate.

Rájáh Ajoodhyaram Khán was an honest and a generous man and had a strong faith in Hinduism. The worshipping of gods and goddesses, the performance of religious rites and ceremonies, the distribution of alms to the poor, the bestowal of gifts on learned Brahmins, and the cultivation of music and other arts were his favorite employments. He personally superintended the management of his zemindáry affairs seeking always to promote the well-being of his ryots and to encourage

education among them. When season of scarcity and malaria visited any part of his zemindáry, he did not look in indifferently, but strove by every means in his power to relieve the distresses of his famine-and-malariá-stricken peasantry.

Six months after the death of the Rájáh, his *Sanmasika Srádddha* (half-yearly funeral obsequies) was magnificently performed. Sixteen sets of silver domestic utensils, each set consisting of sixteen varieties, and heaps of brass water-pots and plates and shawls and broad-cloth and valuable silk cloths, were offered in the oblation. It was what is called, *Dánságar Srádddha.* Learned Brahmins from Calcutta, Naddiá, Maimánsingh, Dáccá, Burdwan, Bankurah, Baleswar, and several other distant places were invited and after a most honorable reception, dismissed with rich presents. Alms were given to the poor and needy, who all went away greatly pleased with the gifts. Sixty-five thousand rupees were spent in this ceremony.

CHAPTER VI.

Rájáh Ajoodhyaram Khán left him surviving two sons, the elder, Rájáh Mohendro Lall Khán, the author of this little work, and Bábu Upendra Lall Khán, the younger.

Rájáh Mohendro Lall Khán was born on the 1st September 1843, at Nárájole. He was initiated into the elements of the Bengali language at home according to the custom of his family, and continued its study till he was 15 years old when he commenced the studies of the English, Sanskrit, and Persian languages under private tutors at home. Having acquired some insight in the last two, he left their study after three years, but continued the first for seven years.

The necessity for assisting his father in the management of his family affairs and for superintending the heavy law-suits then pending, for which his presence both in Calcutta and

Midnápur was frequently required, obliged him in 1866 to leave up his studies. But even in such trying circumstances, he, having had a taste for reading both English and Bengali books and newspapers, did allow them to be his constant companions whenever he had opportunities and leisure, and this did in a great measure facilitate his improvement and progress in them. He is not addicted to any sort of intoxication, not even smoking the tobacco.

In June 1850, Sankará Daye, the widow of Nanda Lal Khán, the elder brother of his grandfather, Rájáh Mohan Lall Khán, by a deed of gift (Hebánámá) conferred on him and on Bábu Naba Lall Khán (the eldest son of his father's step-brother, Ram Chandra Khán) in equal shares, her zemindáry, rent-free and debutter lands, the gods and goddesses named Gobindaji, Latooraiji, and Jaidurgá, &c. He has subsequently purchased the greater portion of the share of Bábu Naba Lall Khán in the said rent-free and the whole of the debutter lands with the said gods and goddesses. When the said gift by Sankará Daye was made, they were both minors, and their respective mothers were appointed their guardians in regard to their respective shares in those properties.

In the year 1857, these properties were, at the instigation of Bábu Rám Doyál Khán, the eldest son of Bábu Srimanta Lal Khán, were attached and put up to auction sale in execution of a decree obtained from the late Supreme Court against Rájáh Ajoodhyaram Khán by one Ishán Chandra Mandal, of Bawaly, in the district of Twenty-four Parganáhs. This sale was, however, after a hard contest, set aside in 1860 by the said Court upon proof of the validity and genuiness of the said deed of gift.

From his early years he imbibed a taste for Hindu music and composed several little works on it, of which the following were published :—

(1) In 1871, the Sangita Lahari.

(2) In 1878, an opera called Man Milan, which had a second edition in 1882.

(3) In 1880, the Gobinda Gitika consisting of 92 religious songs, set into different Rágas and Ráginis suitable to be sung at the different parts of the day and night with notations of some of them.

(4) In 1881, the opera Sárodutsoba.

(5) In 1883, the opera Mathurá Milan.

His father recovered the possession of the Midnápur Ráj in 1870, and since then he used to take him in consultation in all matters from which he gradually obtained such a fair knowledge of zemindáry affairs that his father was able from time to time to retire entrusting him with the zemindáry business.

In June 1879, he was deputed by his faher to negotiate for and complete the purchase of his paternal zemindáry Nárájole from Mahárání Narain Kumári, of Burdwan. He had to go there for the purpose and stay for nearly a month, but in the meantime and before his return, his venerable father, who loved him much, suddenly died on the night of 28th June 1879. He deems and will ever deem it a great misfortune to him and a source of mental grief for all his life that he was not able to be present when his beloved father breathed his last and to perform the duties of a son.

His father, Rájáh Ajoodhyaram Khán did neither execute any will nor make any disposition of his property. According to the rule of primogeniture prevailing in his family from time immemorial he succeeded to the Ráj and obtained, on the 4th September 1879, a certificate from the District Judge of Midnápur under the provisions of Act XXVII of 1860. His name has since been registered in the Midnápur Collectorate as the sole proprietor of the Midnápur Ráj.

On the 19th February 1887, His Excellency the Viceroy was pleased to confer upon him the title of Rájáh on the

auspicious celebration of Her Majesty, the Queen-Empress's Jubilee in India. His Honor the then Lieutenant-Governor of Bengal conveyed to him the intelligence by His Honor's kind letter which runs as follows :—

"BELVEDERE, 19*th February*, 1887.

"RÁJÁH,

"It gives me great pleasure to congratulate you on your accession to the title of Rájáh which H. E. the Viceroy has been pleased to confer upon you, in recognition of your public spirit and liberality on many occasions, on the auspicious celebration of Her Majesty, the Queen-Empress's Jubilee in India.

"I trust you may be spared many years in the enjoyment of an honor which is appropriate to the representation of a family of ancient lineage.

"I am,

"Yours sincere friend,

"RIVERS THOMPSON,

"*Lieutenant-Governor of Bengal.*

"To

"RÁJÁH MOHENDRO LALL KHÁN,

"*Midnapur.*"

On the 15th July 1887, at 4-30 P.M., the Hon'ble Sir S. C. Bayley, the Lieutenant-Governor of Bengal, held a Durbár in the Bengal Secretariat for investing the several recipients with their respective titles.

A detachment of the 7th N. I. Regiment, under the command of a European Officer, formed a guard-of-honor and presented arms as His Honor arrived, and with a procession

preceded by the Chobdárs and accompanied by the Chief Secretary, Secretaries and Under-Secretaries, His Honor entered the Durbár Hall and took his seat on the Dais. The usual forms of each of the recipients being separately presented to His Honor, with His Honor's permission, brought back to be robed, and again conducted to the Durbár Hall, His Honor granting the Khilluts, and the Chief Secretary reading out the Sanads, His Honor verbally addressing to each of them by short speeches, and they in return holding the usual Nuzzer of a goldmohur before His Honor, which was touched and returned, and all present standing on every occasion, were faithfully observed. Rájáh Mohendro Lall Khán was the third on the list, and had, with all the above forms, been honoured with a Khillut consisting of a sword and belt with which he was robed and a pearl necklace which His Honor put on his neck, and in his case the address of His Honor was as follows :—

"Rájáh Mohendro Lall Khán,—I regret that I have not "the advantage in your case of the long personal acquaintance "which, in the case of some of the recipients of honors at to-"day's Durbár, gives me such a close and individual interest in "their distinction. None the less do I welcome you here, and "none the less do I take pleasure in investing you with the "well-earned dignity which the Viceroy has bestowed on you. "The representative of a very ancient family in Midnápur "which received its honors from the Mogul Government, you "have devoted your wealth and influence as your father did "before you to the service of your fellow-countrymen. In "endowments and donations to schools, libraries, and hospitals, "in the construction of the Nárájole embankment, and, above "all, in the remission of rents to your tenantry in bad years, "you have set a noble example, and it was a recognition of the "many acts of benevolence and public spirit, both of yourself "and your father that Sir Rivers Thompson recommended you

"for the distinction of Rájáh which, in the name of the Viceroy, "I have now much pleasure in conferring on you." *

APPENDIX A.

THE Midnápur Ráj is one of the 1st class estates in the Midnápur district. Its climate is dry and healthy. It is not now covered with jungle, with the exception of small areas, nor does it include any saline tracts. It is also called Bhanjabhum, after the name of the largest of the Parganáhs which constitute the estate. The name Bhanjabhum is derived from the word Bhanja, the name of a sub-division of the Jángli tribe of Bhumeej. The Bhumeej Rájáhs were the original proprietors of the Parganáh of Bhanjabhum. After them it came into the possession of Khárrá Mági (a Jángli tribe.) Surat Singh was the last of this line. In his time it was a feudatory state under Mookunda Deb, the King of Orissá. The zemindárs of Parganáhs Naraingar, Balarampur, Kedár and Kharakpur were subordinate to him. Lakshman Sing was his Dewan and Commander-in-Chief, the zemindár of Balarampur was his Gar-sardar (Marude-police) and the zemindár of Naraingar, the Deputy Gar-sardar.

Mr. H. V. Bayley says in his note on Midnápur that "these three conspired and slew their master, and divided the whole of his property. The Khárrá Rájáh's seven wives burnt themselves, prophesying at their death, that after seven generations, the families of these treacherous servants would be heirless and the properties would pass to others. This has been fulfilled in the Balarampur family. In the Naraingar this is the seventh generation. In Midnápur the family of Ajit Sing has long been ousted by the present holder."

---

* See *Englishman's* Dâk Edition Nos. 166 & 167 ; 16th and 17th July 1887, and the *Statesman* No. 5443, 16th July 1887, and No. 29, weekly edition.

In 1118 (B. S.) Kamal Lochan Bhooah, the zemindár of Parganáh Dhenkiábázár, having failed to pay the Revenue assessed on his zemindáry (which at that time was Rs. 6,894-9) to the Subedar of Bengal, the Parganáh was made over to Rájáh Jeswanta Sing, whose zemindáry received a fresh accession by the addition of Parganáh Báhádurpur, in charge of which he was placed about this time owing to the flight of the former zemindár caused by his having been found guilty of some unfairness in dealing with the ruling power. The Sadar jumma of the latter Parganáh, at this time, was Rs. 2,434-12-16 gandas.

The Midnápur Ráj now consists of four Parganáhs, *viz.*—

First.—Parganáh Midnápur or Bhanjabhum, which is divided into two parts called Junglemehal and Vilatmehal. *Second.*—Parganáh Manohargarh now included in Parganáh Midnápur. *Third.*—Parganáh Dhenkiábázár situated to the southeast of Parganáh Midnápur. Much of this Parganáh is traversed by the Midnápur Canal. *Fourth.*—Tuppa Báhádurpur situated to the west of Parganáh Midnápur. Formerly this Parganáh was covered with jungle. Now, however, with the exception of small tracts, it has been brought under cultivation.

Rice, the staple food of the people, is largely cultivated in Parganáhs Midnápur, Manohargarh and Dhenkiábázár. Indigo, mustard seed and linseed are grown in great abundance in the jungle portions of the estate, and on a small scale in parts of Dhenkiábázár. The Midnápur Canal has proved a great boon to the people of the last-named Parganáh, who are essentially agricultural, by supplying them with water in seasons of drought and helping the carriage of their products to marts where they can be sold to the best advantage.

The river Cossye runs from west to east through these Parganáhs, the total area of which is estimated to be 727,590 Bighas or 309,613 acres. It contains 2,916 villages.

The present Government Revenue of the whole estate is Rs. 90,214-5-11 gandas, of which Bábu Bholanath Dutt pays Rs. 3,837-8 for the ten-anna share of Báhádurpur which had been transferred to him so aforesaid, and the heirs of the sons of the Rájáh Ajit Sing's maternal uncle, Rs. 1,134-10 11 gandas for the property which they have received for their maintenance by amicable settlement, and the rest Rs. 85,242-4 is paid by Rájáh Mohendra Lal Khán.

The town of Midnápur is the healthiest place in the Ráj.

APPENDIX B.

It is said that Lakshman Sing and Syam Sing (Sutgope by caste) were natives of Nilápore, in the district of Burdwan When very young they came to Midnápur with their father, who, being very poor at the time, got his eldest son Lakshman Sing, appointed as a cowherd in the family of the priest of Rájáh Surat Sing (Khárrá Magi). One day the priest, finding that the cowherd had not returned with his cows though it was midday, went himself in search of him to the jungle and there he found him sleeping and a black snake holding its hood over his face to protect it from the sun, and the cows feeding by him. Observing this he thought that Lakshman was not an ordinary man, and from that day he ceased to employ him as his cowherd. Lakshman Sing was a very clever and strong built man. His personal bravery and great physical strength attracted the notice of Rájáh Surat Sing who employed him in a subordinate post in his service, from which he at last rose to the post of Dewan and Commander-in-Chief.

When Suliman, the King of Bengal, sent an army to invade Orissá, Rájáh Surat Sing sent a small force under his Commander-in-Chief, Lakshman Sing, to assist the Orissá

Rájáh. Lakshman Sing succeeded in defeating the invading army, which so much pleased the King of Orissá that he conferred on him, as the reward of his valor, the Midnápur Ráj and furnished him with a band of brave soldiers (whose descendants are still living in Dangarpárá, near Karnagarh) to enable him to take possession of it.

It was in those days, as the rumour goes, a long established practice amongst the chiefs of that place to remove the female members of their families to some secret retreats whenever their forts and frontiers were invaded by foreign enemies. The King of Orissá had this in view and he therefore ordered Lakshman Sing to employ his men for the purpose, and being satisfied by their faithful performance of this object, he conferred titles upon the three chiefs and most faithful assistants of Lakshman Sing's own tribe employed for the work; according to their respective services: On one he conferred the title of *Bhoomea*, for his preparing an underground path by digging (Bhoomi khanan). On 2nd *Poyal mal*, for his skill in devising means to remove the roughness of the path by covering it all over with rejected straws (*Poyal Khur*) and so making it imperceptibly passable for the Ránis with the ornaments on their legs. On 3rd *Pal*, for his assisting and escorting the Ránis at their flight (*Paláyan*). Lakshman Sing, on his return from Orissá, accordingly entered into a conspiracy with the Gar-sardar and the Deputy Gar-sardar of his master, and with the assistance of the troops he obtained from the King of Orissá, defeated and slew Surat Sing. The conspirators then divided the Ráj among themselves.

Rájáh Surat Sing had seven wives, who all burnt themselves by ascending the funeral pile of their husband, imprecating, in prophetic terms at the time of their death, curses on the three treacherous servants, to the effect, that

within seven generations, their families would be extinct and their properties would pass into other hands. This prophecy has long been fulfilled in regard to the family of Lakshman Sing and of the Zemindár of Balarampur. And lately, in the seventh generation from the Deputy Gar-sardar, it has been verified also in the case of the Naraingar family.

APPENDIX C.

Karnagarh, now in ruins, was a strong fortress, situated about six miles north of the town of Midnápur in the midst of a desolate tract of country. It was divided into two parts, the inner and the outer. In the outer portion soldiers were garrisoned and marts held. The temples of Dandeswur and Mahámáyá, the tutilary God and Goddess of the Ráj, remain to the present day and are situated in this part of the fortress. These temples are built entirely of stone. In the temple of Mahámáyá there is a seat for worshippers called *Pancha-Mundi* made of five animal skulls, prepared by Rameswar Bhattacharyya. (*See* Appendix F.) There is also a separate house for the devotees which is called *Jogee Khopá*. In the temple there is a well called *Siddhi Kunda*, the drinking of the water of which is said to cure barrenness in women. The inner part of the fortification, which formed the family residence of the Rájáhs, is surrounded with a moat filled with water which separates it from the outer part. There are a few other temples in the fort besides those mentioned above.

APPENDIX D.

Awásgarh is on the north of the town of Midnápur and is situated to the east of the road leading to Bánkurá. It occupies about 100 bighás. Ráni Siromani during the latter part of her life took up her residence in this fort, which sub-

sequently formed the residence of Rájáh Mohan Lal Khán, who improved it in many respects.

APPENDIX E.

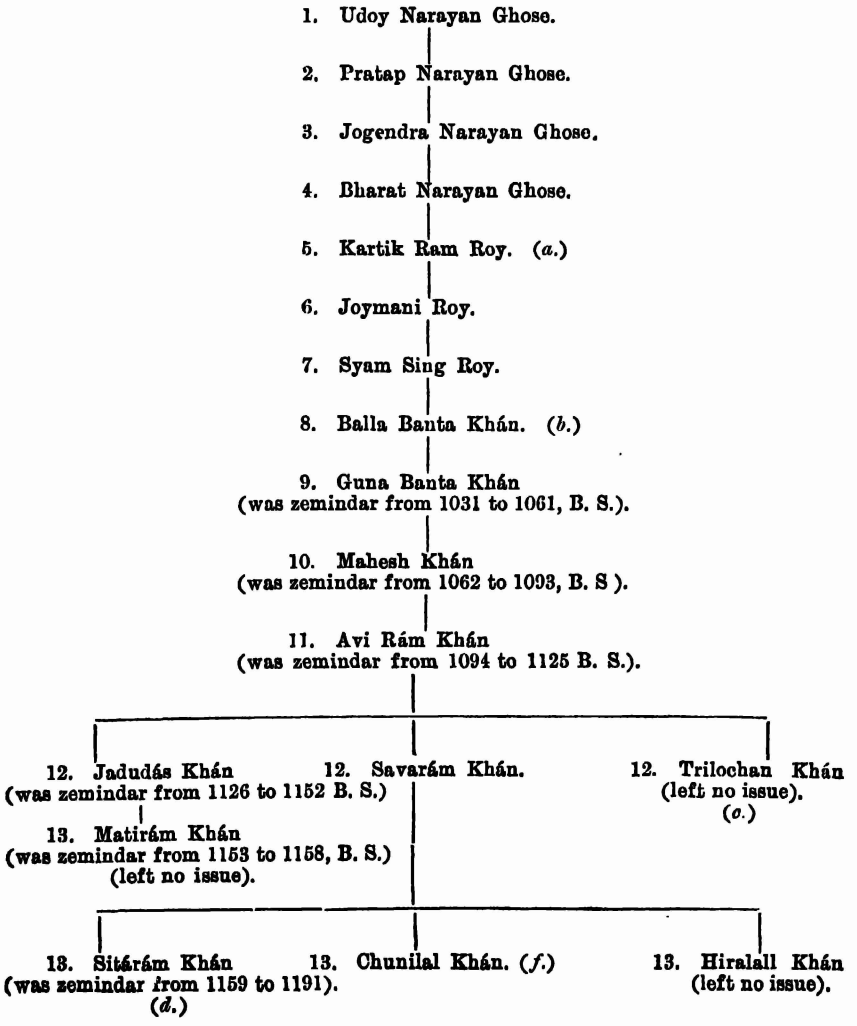
Rájáh Rám Sing had an army of 12,000 men. The Commander-in-Chief was called *Bukshi* and the officers, *Sardárs*. The common soldiers were designated Paiks. They received jaigirs in lieu of pay. The weapons of war consist of fire-arms, arrows, battle-axes and javelins. When any occasion for calling out the army arose, a drum was beaten at the entrance of the fort as a signal for the soldiers to assemble.

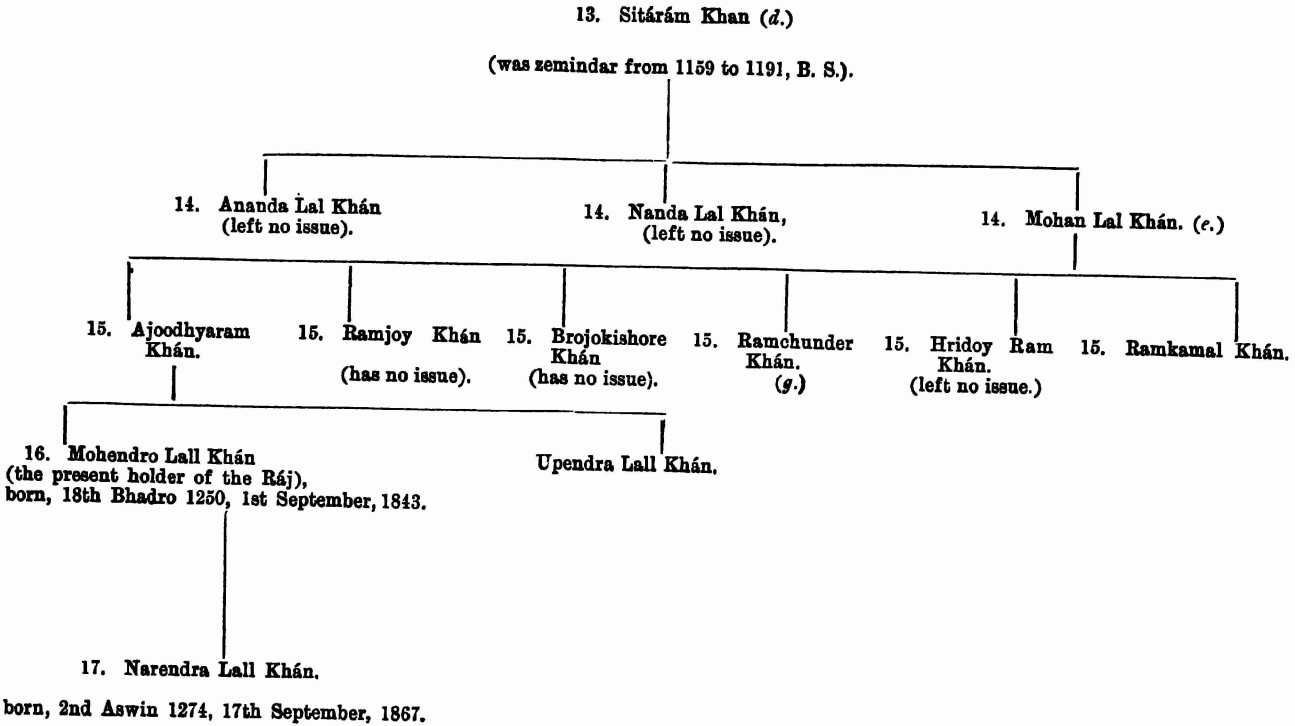
APPENDIX F.

Rameshwar Bhattacharyya was a Rári Brahmin. He at first lived at Jadupore, in Parganáh Bardá in this district, where he practised *Yoga* according to the *Tantras*. Here he composed the *Satyanaryan Kathá* which is still read and sung, specially on the occasion of doing Puja to Satyanarayan. He afterwards left Jadupore, and became a courtier of Rájáh Jeswanta Sing taking up his abode at the village of Ajoodhyabar, in Parganáh Midnápur. In the temple of Mahámáyá, in the fort of Karnagarh, he prepared a seat with five animal-skulls, called *Pancha-Mundi*, which exists to this day. Being seated on this *Pancha-Mundi*, he used to practise *Yoga*. It is said that the Goddess, pleased with his devotion, gave him a string of beads (*Rudrakshamálá*), and that it was under her inspiration that he composed the *Siva Sunkirtan*, commonly called *Siváyan*. This poem describes the life and adventures of *Siva* and *Durgá* and is interspersed with amusing stories, hymns to Gods and Goddesses, and stories from the *Puránas* related by *Siva* himself. To this day it is sung by itinerant musicians and beggars in various parts of the country.

APPENDIX G.

The following is the genealogical table of the Nárájole zemindár's family which, since the time of Ananda Lall Khán (June 1800), has also held possession, with an interruption, of the Midnápur Ráj. The law of primogeniture, it will be seen, has prevailed in the family since it was founded by Udoy-narayan Ghose, the eldest son having always succeeded to the Gaddee of his father.


1. Udoy Narayan Ghose.
2. Pratap Narayan Ghose.
3. Jogendra Narayan Ghose.
4. Bharat Narayan Ghose.
5. Kartik Ram Roy. (a.)
6. Joymani Roy.
7. Syam Sing Roy.
8. Balla Banta Khán. (b.)
9. Guna Banta Khán (was zemindar from 1031 to 1061, B. S.).
10. Mahesh Khán (was zemindar from 1062 to 1093, B. S).
11. Avi Rám Khán (was zemindar from 1094 to 1125 B. S.).
12. Jadudás Khán (was zemindar from 1126 to 1152 B. S.)
13. Matirám Khán (was zemindar from 1153 to 1158, B. S.) (left no issue).
12. Savarám Khán.
12. Trilochan Khán (left no issue). (c.)
13. Sitárám Khán (was zemindar from 1159 to 1191). (d.)
13. Chunilal Khán. (f.)
13. Hiralall Khán (left no issue).


13. Sitárám Khan (d.)
(was zemindar from 1159 to 1191, B. S.).
14. Ananda Lal Khán (left no issue).
14. Nanda Lal Khán, (left no issue).
14. Mohan Lal Khán. (e.)
15. Ajoodhyaram Khán.
15. Ramjoy Khán (has no issue).
15. Brojokishore Khán (has no issue).
15. Ramchunder Khán. (g.)
15. Hridoy Ram Khán. (left no issue.)
15. Ramkamal Khán.
16. Mohendro Lall Khán (the present holder of the Ráj), born, 18th Bhadro 1250, 1st September, 1843.
Upendra Lall Khán.
17. Narendra Lall Khán, born, 2nd Aswin 1274, 17th September, 1867.

(*a.*) Roy is a surname.

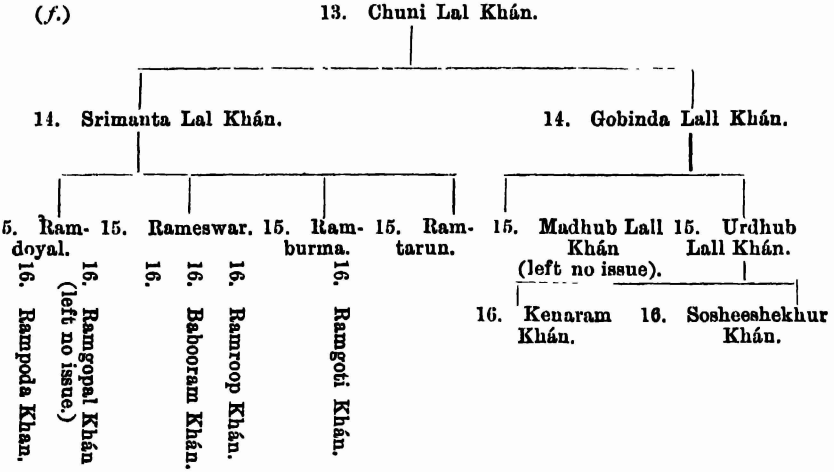
(*b.*) The title of Khán was obtained from the Nawab Nazim of Bengal.

(*c.*) Trilochun Khán was an able and a brave man. It is said that he was a favorite of the Goddess Mahámáyá, and received from her, as a mark of favour, a piece of cloth bearing her foot marks which is preserved and which the Kháns still worship in their family temple at Nárájole.

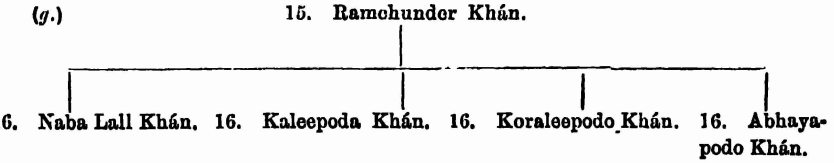
(*d.*) Died at Kurnagarh at the 52nd year of his age.

(*e.*) Rájáh Mohan Lall Khán had four wives, the first and the second of whom died without issue. His 3rd wife, Rani Kundalatá gave birth to Ajoodhyaram Khán, Ramjoy Khán, and Brojokishore Khán, and Ramchunder Khán, Hridoyram Khán and Ramkomul Khán were the sons of his 4th wife Rani Rungalatá.

(*f.*)



(*g.*)



APPENDIX H.

Nárájole was formerly included in Parganáh Kutabpore but now it is a separate Parganáh called Tuppa Nárájole. This latter parganáh includes 30 large and 10 small villages, and is bounded on the north by the Parganáhs of Brahmanbhoom, Bardá and Chandrakoná ; on the west by the Parganahs of Brahmanbhoom and Bhanjabhum or Midnápur ;

on the south by the Parganáh Kutabpore, and on the east by Parganáh Chetuá. Its superficial area is about 14,000 bighas, and estimated population about 8,000.

It is commonly divided into three parts: the first called the Doab or the middle part, which includes those villages and tracts, which lie between the right and left banks of the rivers Silye and Cossye respectively; the second comprises that tract of country which lies on the right bank of the Cossye; and the third stretches along the left bank of the Silye. These two rivers, the Cossye and the Silye, into which the Paráng, the Boorigáng and the Danái pour their waters, flow through it from west to east. Owing to the annual overflow of these rivers, the general character of the soil is very fertile, and it yields rice, sugarcane, linseed, mustardseed &c., in abundance, besides kitchenery vegetables and different kinds of delicious fruits, such as mangoes, litches, jacks, cocoanuts, plantains, berries, &c.; milk, butter, ghee, and fish can be had here in sufficient quantities. Its principal articles of manufacture are the finest kinds of cloth and mat. Most of these are generally exported to towns.

Nearly one-third of its inhabitants are Brahmins, Kyasthas, and Nabasak, and the rest are ignorant cultivators of the Kaibarta caste. These Kaibartas in general, cultivate mulberry plants and rear aureliá and silkworm which, to some extent, supplies the country with silk.

This parganáh was formerly covered with thick jungles, but now no trace of them is to be seen far around it. The Khans are its original inhabitants. Long ago they settled themselves in the village of Nárájole, situated in the Doab or the middle part of the parganáh, and fortified their habitations with a strong fortress which is called Gar-Nárájole. This Gar encompasses an area of about 330 bighas. It is divided into two parts, the inner and the outer. The area of the inner Gar is about 32½ bighas. It has terraces or raised banks of

earth, covered with trees and shrubs on all sides, round which there is a deep moat or ditch. It has only one entrance on the east. The outer Gar like the inner was also surrounded with a ditch which no longer exists. Milkmen or Gowálás, wickermen or Domes and even Mussulmans were formerly allowed to reside in this Gar, as ryots, on condition of doing military service to the Khán family at the time of any exigency or foreign attack, especially that of the Mahrattás who were in those days often accustomed to make their inroads into these parts. Mud-balls and bullets, arrows, swords and guns, called Kállybundooks were the chief instruments of defence, cannon pieces being very seldom, if ever, used.

The inner Gar is appropriated for the family residence of the Kháns, and in it splendid temples and pagodás of gods and goddesses are to be found. Under the control and superintendence of the officers of this Gar, there were two other Gars, one called Futaigarh, and the other Bair Gopináthpore. The ruins of these are still to be found in Tuppa Nárájole. The Kháns resorted to these Gars and hid their family and treasures in them at the time of the invasion of the Mahárattás, or when hard pressed by other enemies. It is difficult to ascertain when and by whom all these Gars were built.

APPENDIX I.

Rájáh Mohan Lál Khán caused many tanks to be dug in his zemindáry, of which 30 are situated in and about Nárájole. Of these latter Lankagar is the largest, measuring 60½ bighas. Its banks are planted with the choicest fruit-trees ; and in the centre of it is a fine building used as a summer-house by the Rájáhs. This tank and the garden surrounding it costed Rájáh Mohan Lall Khán Rs. 80,000. In 1225 (B. S.) he built a temple in Gar Nárájole with stones, which he brought with him from Benares on his return from a pilgrimage to

that sacred city, and dedicated it to Rám, Sitá, Bharat, Satrughun, and Lakshman, having previously set up the images of these deities in it. On the occasion of the dedication of the temple he caused the mock-nuptials of Rám and Sitá to be celebrated with great eclát. Learned Brahmins from Benares, Drávira and various other places were invited to witness the ceremony which costed the Ráját nearly Rs. 1,50,000. In 1235 (B. S.) he erected a *Math* at *Sámát* in Parganáh Chetua in this district, and appointed one Gangárám Dás to be the *Mahanta*. The ceremony of consecrating the *Math* was also performed with a splendour befitting a Ráját. Mahantas from Benares, Brindában, and other places were invited on the occasion; nearly a lákh of rupees was spent in consecrating and endowing it. Besides these he performed many other religious ceremonies, and spent much money in daily feeding mendicants who came to the alms-houses raised for them at Nárájole and Awásgar.

APPENDIX J.

Sudder Dewany Adalut,

The 30th April, 1844.

PRESENT:

J. F. M. REID, Esq. ... ... *Judge.*

A. DECK, Esq. ... *Temporary Judge.*

E. M. GORDON, Esq. ... ... *Offg. Judge.*

No. 302 *of* 1841.

Regular appeal from the decision of the Principal Sudder Ameen of Midnapore.

Ráját Ajoodhyarám Khán, ... *Appellant*

versus

Ranee Rangalata, Ráját Rám Chandra Khán and others, ... *Respondents.*

The appellant states that his father's elder brother Ananda Lal Khán received in 1800 the rights and proprietorship of

zemindáry called Parganáhs Midnapore, Dhenkiabazár and Monahargarh and Tuppa Bahadurpore by virtue of a Deed of Gift from Ranee Siromoni, the widow of Rájáh Ajeet Sing the former proprietor. That Ananda Lal, dying without children, transferred the zemindáry to Mohun Lal Khán, the appellant's father. That the above Deed of Gift was declared illegal by a decree of this court, dated the 31st August, 1812, and the succession to the zemindáry, at the Ranee's death, declared to devolve upon Bala Bhadra Bhunya and others, her husband's maternal first cousin. That subsequently to this decree these heirs transferreed the rights and privileges appertaining to the zemindáry, with the zemindáry itself, to the appellant's father by a Deed of Relinquishment, dated the 14th Assin 1220 Umlee, 27th September, 1813. That accordingly Rájáh Mohun Lal Khán continued in undisturbed possession till the year 1237, when being ill of asthma, he put the appellant on the *gaddee*, according to the custom of the family, appointing, as his guardians, his wives, Ranee Kundulata (the appellant's mother) and Ranee Rangalata, and by Will constituting the appellant, his representative and the heir of the whole of his property, and enjoining that his name should be entered in the mutation register when he came of age, died. After long protracted litigation of a miscellaneous kind, the Sessions Judge on the 21st September, 1840, founding on a miscellaneous proceeding of this Court dated the 16th August, 1836, ordered that one-half of the zemindáry should remain in the possession of the appellant and his two younger brothers, by the same mother, and the other half should be possessed by the respondent, Ram Chandra Khán and his two younger brothers by the same mother. The appellant was thus compelled to sue the respondents in the zillah court of Midnapore on the 20th January, 1841, to recover the possession of the half of the property, of which possession had been given to the respondents and have his name entered in the mutation register as exclu-

sive proprietor. That he claimed these rights on the following grounds :—

1*st.*—That the appellant's father died in the possession of the whole property, following the custom of the family of Ránee Siromoni.

2*nd.*—It has all along been the custom of the Rájáhs to have one of the family as proprietor of the whole estate, and this custom continued down to the time of the appellant and his father.

3*rd.*—That the registering of the names of the appellant's brothers, and those of two Ránees, and of his brothers by a different mother and the appointment of a guardian on the part of his brothers are contraventions of the conditions of the will.

4*th.*—The meaning of the will was to appoint the appellant sole proprietor. What is written at the end is merely admonitary to the appellant to act justly, &c. Ranee Rangalata, pleads without cause the existence of the feuds merely that the property may be divided. If there be feuds, let them be ascertained who is at the bottom of them.

The substance of the respondent's answer was this. That the property under dispute is not the hereditary property of either party, neither being of the Rájáh's family. The custom of their own family is that of partnership.

The meaning of the Will is this :—That if the elder brother conduct himself well, acting with the advice and approbation of his brothers and jointly, with their voluntary consent, then he may remain as master ; but that if he act in an opposite way, the zemindáry should be shared. That dissensions originated with the appellant and his mother. It is clear that the father of both wished that his property should be divided, both from the meaning of the Will and from a letter of his, respecting charity. That as their father himself acquired the property, the custom of another family regarding its

disposition cannot obtain, even if the custom of that family were (which it was not) that one should be invested with the exclusive proprietary right. The Principal Sudder Ameen Ram Mohan Roy, on the 18th September 1841, dismissed the suit with costs on several grounds. It appeared that the zemindáry, which had been sold for arrears, had been restored to the six brothers by the Government.

This circumstance has the effect of cancelling the conditions of the Will. Further, both brothers, as proprietors of eight-anna-shares had entered into a farming arrangement with Mr. Watson, for the jungle lands. How upon this, can the plaintiff claim the whole property? The terms of the Will not having been complied with by the plaintiff, he cannot be recognised as sole proprietor. The plea urged by the plaintiff in his rejoinder, that the disputed zemindáry came under the provisions of Regulation X of 1800, is disproved by the decree of the Sudder Dewany Adawlut, dated the 31st August 1812. Besides, the sale for arrears would take the case out of the provisions of Regulation X of 1800 even if it otherwise came under that law. The letter filed by the defendants and signed and sealed by Mohan Lal Khán, and which the Principal Sudder Ameen considered as genuine, proves that the Rájáh wished that all his family should inherit. In this letter, the writer is made to say that Rájáh Ajoodhyaram Khán and Rájáh Rám Chandra Khán, &c., continuing the Ráj should confirm the grant. The Principal Sudder Ameen lays much stress also on the interpretation put on the Will in the miscellaneous order given by this Court.

Against this decision, Rájáh Ajoodhyarám Khán appealed. The decree of the Sudder Ameen and the grounds thereof, appears to this Court to be erroneous and unsatisfactory. The arguments, that the conditions of the Will were cancelled by the reversal of the sale by the Government, is altogether untenable, inasmuch as the Government by this act

merely placed the zemindáry in condition in which it stood previously to the sale. In like manner the annulment of the sale obviously brought the right of succession to the zemindáry under the provisions of Regulation X of 1800 if that law obtained, with respect to this zemindáry before the sale occurred, so the farming agreement entered into by the appellant for the half of the jungle lands with Mr. Watson, proceeded upon the principle, that a miscellaneous order of this Court recognised him only as a sharer; but by no means barred from claiming a right to the whole property in a Court of Justice. It is not true that the decree of this Court, dated the 31st August 1812, proved that the Regulation X of 1800 did not apply to the zemindáry claimed by the appellant. The point of divisibility of the zemindáry was not discussed in the above case, and all that this Court declared, was that certain parties had certain rights and interests of the zemindáry, a contingency which occurs, in cases, in which the applicability of Regulation X of 1800 is indisputable. The Court entertain great doubts as to the authenticity of the letter alluded to by the Principal Sudder Ameen; and, at all events, it cannot set aside the Will, the genuineness of which is admitted by both parties.

With respect to the order of this Court founded on by the Principal Sudder Ameen, it was merely of a miscellaneous nature, and moreover it expressly left both parties, if dissatisfied, to claim by a regular suit their respective rights.

The Court are of opinion that in this case, there is involved the consideration of the following points:—

1*st.*—What was the practice with respect to inheritance of the family of Ajeet Sing, whose property was acquired by Rájáh Mohan Lal Khán?

2*nd.*—What can be considered to be the meaning, in a fair and liberal sense, of the Will, executed by Rájáh Mohan Lal?

3rd.—Under what condition, expressed or implied, did Mohan Lal acquire this property, and if on the condition of holding it according to the custom of the Ajeet Sing's family, was he competent, even if he wished to do so, to divide the property amongst his children at his death ?

With respect to the first point, the Court are of opinion, that the zemindáry which forms the subject of this suit was not divisible. They place more reliance on the evidence of the witnesses of the appellant on this point, than on that of the respondents. In corroboration of the Court's opinion, they would refer to the fact, that Mohan Lal in his Will distinctly asserts, that one member of the family has passed the property, and he himself acquired, entire from his brother Ananda Lal Khán, though at the time of this acquisition, another brother of both was alive, *viz.*, Nanda Lal. Again, it appears from the genealogical table, filed by Siromoni in the case decided by this Court in 1812, that for several generations the zemindáry had been held entire by one member of the family, though from the anarchy prevailing usurpation by one, of the property held by another, was not uncommon. In addition to these circumstances, it must not be forgotten that the zemindáry is situated in a locality where the practice of indivisibility has invariably obtained.

With respect to the second point the Court are clearly of opinion, that it was the wish of Rájáh Mohan Lal Khán, that the appellant, after he came of age should become the proprietor of the whole zemindáry and others mentioned in the Will, enjoying the privileges and exercising the duties required of him, as the chief, according to the custom of the family, whose property, he, Mohan Lal, had acquired. Though a few words towards the end of the Will are well fitted to create dissension, the Court think they were intended as a warning to the appellant, not to withhold proper support and maintenance from his brothers and by no means meant to authorize

a division, amongst the brothers, at the option of any or all of them. With respect to the third point it is clearly implied in the opinion of the court in the Deed of Relinquishment in favour of Mohan Lal, executed subsequently to the decree of this court of the 31st of August 1812, by the person declared in that decree to be the heirs of Ajeet Sing, after the death of his widow Siromoni, that Mohan Lal was to enjoy the dignity and benefits of exclusive proprietor, managing the property, and exercising the duties belonging to the office of Rajah, as they had been heretofore exercised, by the holder of the property for the time being, and Mohan Lal did hold the property in this manner up to the time of his death. The court put verbally the following questions to their Hindu Law officer :—Whether in a district and family, in which the practice of indivisibility prevailed, any representative of that family could divide the property amongst his children by Will at his death ? The answer was in the negative ; and as the court think, that Rájáh Mohan Lal must be regarded as the representative of the family of Ajeet Sing, they are of opinion that he could not legally deviate from the custom of that family even if he had wished to do so. The court accordingly decree for the appellant, reversing the decision of the Principal Sudder Ameen, awarding the costs of both courts against the respondents.

APPENDIX K.

High Court of Judicature at Fort William in Bengal.

The 1st June 1863.

PRESENT :

The Hon'ble H. V. Bayley
and
The Hon'ble G. Campbell. } *Puisne Judges.*

Regular Appeal No. 57 of 1861.

Ojoodhyaram Lall* Khan... ... (*Plaintiff*) Appellant.

Versus

Charoo Chunder Ghose ... ... (*Defendant*) Respondent.

For Appellant—Baboo Unnoda Prosaud Banerjee.

For Respondent—Moonshee Ameer Ally and Mr. R. T. Allan and Baboo Dwarka Nath Mittra.

Suit laid at Co.'s Rs. 2,72,000.

The Hon'ble H. V. Bayley—In this case the leading facts appear to be these, (*i.e.*), that Raja Ojoodhyaram Lall* Khan, zemindar of Midnapore, falling into arrears as to the payment of government revenue, mortgaged his property to Ashootosh and Promothonath Deb ; they foreclosed and got a decree of foreclosure in the Supreme Court, and then sold their rights and interests to Mr. Abbott.

After this, Ojoodhyaram Lall* Khan, filed a bill of revivor in the Supreme Court, in order to have his right of redemption re-opened. Ojoodhyaram got a decree in 1852, recognizing that right, and ordering the master to take an account. While these proceedings were pending, Abbott, it is alleged, agreed with one McArthur, that he, being in possession under the rights of the mortgagee, should allow the estates to fall into, and remain in arrear, and thus cause them to be sold, when McArthur was to buy them. McArthur having agreed, it was verbally stated here to re-sell to the Nawab Nazim, with whose affairs he was then connected—the purchase-money received from the latter to be shared between the two, and not to be less than 3 lakhs of rupees.

The mehal was, in pursuance of this plan, allowed to be in arrear, and was sold on the 28th April 1848. It was purchased by McArthur for Rs. 85,000, and sold to the Nawab Nazim—or rather, to one of his men, Nawab Saduck Ally—for three

* *Sic.*

lakhs, and re-conveyed, by a *ladavee*, from Saduck Ally's widow to the Nawab Nazim. The Nawab then re-conveyed to Nazir Nuzzur Ally, who remained in possession thereof for some-time; and since then some of the property appears to have passed by private transfer into various other hands.

The prayer of the plaint is for re-possession, on the title acquired by the decree of the Supreme Court; for permission to redeem on an adjustment of accounts; and also that all the fraudulent acts of Abbott, McArthur, and the Nawab Nazim, and his dependants may be declared null and void; further, that the public sale may be treated as any private sale tainted by fraud, might be,—but the plaint does not pray, for the reversal of the revenue-sale.

The answer of the representatives of Ashootosh and Promothonath Deb is that limitation under the general law, Section 14, Regulation III of 1793, and limitation under Act I of 1845, bar the action, and that the interest of the Debs, passed *bonâ fide*, for valuable consideration, into the hands of Abbott.

The Nawab Nazim pleads to the same effect, as to limitation, both as to the Sale Law I of 1845 and the general law barring the suit, and denies any connection with McArthur or any fraud; he pleads that all his transactions were *bonâ fide*. The Nawab Nazzur Ally's pleading is of the same tenor.

The Judge below has dismissed plaintiff's suit, considering it barred by limitation under the provisions of Act I of 1845, holding at the same time, that sixty years' limitation under Regulation II of 1805, is not applicable to this case. The Judge remarks that the action, if not brought to reverse the revenue sale, is brought to set aside agreements made and titles acquired under that sale and that both agreement and sale must be cancelled before the prayer of the plaint can be granted, but that plaintiff's proper remedies were to have paid in the money and saved the estate from sale, or failing that to have sued for damages under Sec. 27, Act I of 1845.

It may be as well to remark in this place that the Judge states that the plaintiff's vakeel pleaded before him that his client's cause of action arose on the 20th June, 1848, when the auction purchaser got possession ; but Mr. Doyne contends here that such cause accrues from 1854, when the plaintiff first ascertained that a fraudulent agreement in writing between Abbott and McArthur had been made in 1848 to bring about the results as detailed. Now, certainly, in the alleged facts the first question which arises is whether, as held by the Judge, the provisions of Regulation I of 1845 bar the suit.

Section XIX of that law is : "And it is hereby enacted that Collectors shall at any time before sunset of the latest day of payment receive or deposit from any party not being a proprietor of the estate in arrear the amount of the arrear of the revenue due from it to be carried to the credit of the said estate at sunset as aforesaid, unless before that time the arrear shall have been liquidated by a proprietor of the estate ; and in case the party so depositing whose money shall have been credited to the estate in the manner aforesaid shall be a plaintiff in a suit pending before a Court of Justice for the possession of the same or any part thereof, it shall be competent to the Judge of the zillah, in which such estate is situated to order the said party to be put into temporary possession of the said estate subject to the rules in force for taking security in the cases of appellants and defendants : And if the party depositing, whose money shall have been credited as aforesaid, shall prove, before a competent Civil Court, that the deposit was made in order to protect an interest of the said party which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit with interest from the proprietors of the said estate."

But here there being at that time no possession, except that of Abbott as mortgagee, and no cognizance of Mc-

Arthur's alleged fraudulent proceedings to cause the sale and benefit by his fraud, jointly with Abbott, it was impossible for any party to apply this section under the facts of the case.

Section XXIV provides: "And it is hereby enacted that no sale for arrears of revenue or other demands realizable in the same manner, made after the taking effect of this Act, shall be set aside by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and except the contravention thereto shall have been declared and specified in an appeal made to the Commissioner under Section XVII of this Act, and except the action in the civil court be instituted within one year from the date of the sale becoming final and conclusive, as provided in Section XIX of this Act, and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money, provided, however, and it is hereby enacted that nothing in this Act contained shall be construed to debar any person considering himself wronged by any Act, or circumstance connected with a sale under this Act, from his remedy in a personal action for damages against the individual by whose Act or omission he considers himself to have been wronged."

Section XXVII provides: "And it is hereby enacted, that the purchaser of an estate sold under this Act, for the recovery of arrears due on account of the same in districts other than those mentioned in Section XXVI, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like, settled or credited by the first engager, or his representatives, subsequent to the last settlement, as well as all tenures, which the first engager may, under

the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act, contained be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid than was demandable by the former malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land in consequence of abatements having been granted by the former malgoozars from the old established rates by special favor, or for consideration or the like, or in cases in which it may be proved that according to the custom of the purgunnah, mouzah, or other local division, such persons are liable to be called upon for any new assessment or other demand not interdicted by the Regulation of Government."

Under these and other provisions of Act I of 1845, a purchaser, under a Collector's certificate, is generally supposed to have the best available title to land in this country.

But still will these provisions of the revenue law prevent a party who sues not to set aside the sale, but for a re-conveyance under the general law for property fraudulently acquired under a fraudulent sale having that equitable relief. Further if Abbott and McArthur agreed that Abbott should make a fraudulent and wilful default, and that even McArthur should buy the property, and that they were, as it is alleged, to divide profits acquired by such fraud, was it not in fact a party in fraud himself by every way benefiting by his own fraud in

fault, which law and equity will always resist. Further, I certainly think that Act I of 1845, was never intended to enable a party in fraud to retain property so acquired as to stop his general rights in equity. Its special provisions in regard to limitation and procedure cannot, in my opinion, impede the general laws which always prevent a man benefiting by his own wrong, specially when, as here, the decree will only be for re-conveying the property *quoad* those parties who themselves or by their agents, are proved to have been in fraud, and the sale proceedings are not set aside ; of course, the decree for re-conveyance would not affect those who may be shewn not to have been themselves or by their agents parties to the fraud. I would therefore reverse the decision of the Judge holding limitation under the Sale Law or the provisions of that law to bar the suit, and decree the re-conveyance to plaintiffs, or such parts, of the property as may upon a trial on the merits upon a remand be shewn to have been acquired in fraud. Costs to follow the eventual results of that re-trial.

The Hon'ble G. Campbell.—The question before us in the first instance—simply is, whether a man, who has fraudulently caused an estate to be sold under Act I of 1845, and bought it himself, can, by process of law, be forced to re-convey it to the party who has been deprived of it by his fraud. The case stated in the plaint is the strongest possible, since it is stated that, in the course of some other proceedings, there has come to light a written agreement between Abbott, the mortgagee, and McArthur, the purchaser, whereby Abbott agrees to let the estate go to sale for the purpose of giving a title to McArthur, who was to pay a price privately fixed between themselves. The original owner seeks to recover from McArthur and others the property obtained by this conspiracy. It seems clear that both the terms and the policy of Act I of 1845, make it impossible to set aside and cancel the sale, or to treat it as a private sale. It is certain that, however obtained,

the sale certificate is a good title against all the world, and that even a fraudulent purchaser can make it over with a good title to *bonâ fide* purchase. We cannot then set aside the sale or give the plaintiff back his original title. But can we not, finding the property in the hands of the fraudulent purchaser, compel him to give the plaintiff a new title by causing him to make restitutions and convey to plaintiff the title which he now holds (the plaint being so far amended)? I think that we can. We do not cancel the sale in opposition to the provisions of Act I of 1845, and our order will in no way affect persons holding any rights under that title, nor endanger the perfect security of the revenue derived from the absolute terms of Act I of 1845. But we can compel the parties to the fraud to make restitutions from any property now in their hands, and especially from the property acquired by the fraud without in any way endangering the rights either of third parties or of the Government. That restitution, so long as not opposed to positive law, seems necessarily to follow from that most fundamental maxim of all laws "No one shall profit by his own wrong."

The fraud being cancelled, limitation dates from the time of its discovery. I think the suit is not barred, and should (with amendment of the wording of the plaint) be tried on its merits.

Then comes the question, how far notice of the fraud suffices to enable the injured party to follow the property into the hands of third parties? It has been very ably argued that mere notice will not suffice as against a real purchaser for valuable consideration. And I do think that it might be dangerous to say broadly that notice of the fraud is sufficient ground for an action of this kind. If knowledge of the fraud at the time of purchase by a third party suffices, then will a mere caution that fraud is alleged or *lie pendens* on the subject suffice? Is a purchaser of an estate held under a sale certificate to be bound

to exercise due diligence to see that there was no fraud in the sale? I think it would be dangerous to say that mere and bare notice suffices, and that it may be a question, if the liability to make restitution should not be confined to those who either before or after the sale by this conduct rendered themselves as it were confederates and parties to the fraud—who had not only notice of the fraud, but acted in pursuance of the object of the fraud, and with a view to defeat the claims of the injured party—in fact to *malâ fide*, not to *bonâ fide* purchasers and for valuable consideration.

In the present case, I understand it to be alleged that McArthur acted as the agent for the Nawab Nazim, and purchased the property at the revenue sale for his benefit. If this were made out, the Nawab would certainly be civilly liable for the acts of his agent done for his benefit, and by which he acquired the property, even if he had no personal cognizance of the fraud. And with respect to Nuzzur Ally, the present holder, I understand it to be alleged by the plaintiff, that he is not a mere purchaser with notice, but, in fact, a servant and creature of the Nawab, who was himself concerned in conveying the property to the Nawab under the fraudulent auction-purchase, and then, really or nominally, bought the property to defeat the plaintiff's claim. On these allegations, I think that plaintiff is entitled to go to trial, and that the case must be remanded for a decision on merits.

High Court of Judicature at Fort William in Bengal.

The 12*th January* 1864.

PRESENT :

The Hon'ble H. V. Bayley
and
The Hon'ble G. Campbell. } *Puisne Judges.*

No. 350 *of* 1860.

Application for review of judgment passed by Messrs.

Bayley and Campbell, Justices, in Regular Appeal No. 57 of 1861, dated the 1st June 1863.

Sidhee Nuzzur Ally Khan ... ... Petitioner.

versus

Ojoodhyaram and others ... ... Opposite Party.

Messrs. Paul and Newmarch, for Petitioner.

Mr. R. V. Doyne, for Opposite Party.

The Hon'ble H. V. Bayley.—In this application the grounds taken in regard to the illegality of ordering an amended plaint need not be referred to by me, because my judgment does not contain that order.

As to the form of the order for remanding the case (my judgment did not specify under what form the remand was to be), I am quite willing to amend the remand order into one for the Judge to proceed under sec. 356, Act VIII of 1859.

My object in my judgment was to record my opinion that it was necessary to see what parties were upon the evidence, which evidence had not been yet gone into, affected by the fraud, that fraud being the main ground on which we held that justice required restitution to the parties defrauded from those defrauding them. It may be added that the parties alleging fraud, sued *interim* in this action for restitution to their position under their Supreme Court title. In respect to the application on the ground of its being an error not to hold with the Judge, that no suit as this will lie on account of the provisions of sec. 24, Act I of 1845, I can merely refer to my previous judgment and repeat in respect to the arguments, now repeated here, that I hold that the suit declared that it was not to reverse the sale, and that it was for restitution to a position which would give title to redemption and thus possession. I will add that the argument now used as to the danger to the Government revenue against the purview of the sale law is futile; for the plaintiff, if he come into possession, he would have to pay revenue under all the liabilities attaching

under these laws. I hold that Act I of 1845 contemplated a revised procedure for all revenue sales, but did not propose that a party acting in fraud would be able to shut out from the Courts of Justice those who were defrauded, if the latter attempted in regular suit for restitution to title and possession to prevent the party or parties who defrauded them, benefitting by such fraud.

I would in this view reject the application, except as to the form of remand which might be under sec. 356, Act VIII of 1859.

Dated 1*st January* 1864.

The Hon'ble Campbell.—My view is that neither can the sale be set aside, nor can any order, having an equivalent effect, be passed. I think that the holder of a sale certificate, however fraudulent may have been the devices by which he brought the sale, can give a perfectly unassailable title to a purchaser from him, and that an action for restitution will only lie against the parties who are liable in an action for damages. Such a suit I consider to be equivalent to action for damages. Ordinarily pecuniary damages will suffice; but their might be a case of ancestral property, for instance, in which plaintiff's loss would not be met by pecuniary compensation, and in such a case I think that, if he be fortunate enough to find the ill-gotten property in the hands of the original wrong-doer, he may claim restitution in the best form of damages, and that the Court can compel restitution. Now I gather from the plaint and the arguments that plaintiff claims a higher remedy equivalent to setting aside the sale, and, therefore, I think that we should not grant a demand unless he agreed to amend his plaint. I greatly doubt whether it will be worth his while to seek a remedy in this form against the parties whom he may prove to have been actual participators in the original fraud. He may very likely find it much more for his advantage to sue the wrong-doers for pecuniary damages than to try to

follow a property which it may be so difficult to catch. Therefore, I would only remand on the condition of an amended plaint. As to the power of amendment, I think that it can be amended at any time ; but, if not, then I think that our order throws the case back to its earliest stage, and that the Court of Original Jurisdiction, before bringing it again on its file, can cause the plaint to be amended under sec. 32 of the Civil Procedure Code. He should say to the plaintiff—Amend or I shall reject your plaint. As it stands it does not constitute sufficient cause of action.

Dated 7th January 1864.

The Hon'ble H. V. Bayley.—I have carefully read Mr. Justice Campbell's judgment, and regret that I cannot alter my view for the reasons above given, and do not concur in admitting the review ; it must be rejected.

Dated 12th January 1864.

The Hon'ble H. G. Campbell.—Yes ; the application for review must be rejected, and my order regarding amendment of plaint will stand as surplusage, for I concur in the original order passed by Mr. Justice Bayley, and understand that whether plaintiff amends or not, he can only have the remedy which I would have given him if his plaint had been amended. I think it would have obviated future difficulty if he were required to amend his plaint, but if he is satisfied to go on under the order as it stands, I am content to let the original order stand.

Order.

Application rejected with costs.

Dated 12th January 1864. (Sd.) H. V. Bayley.
,, G. Campbell.

Judgments of the Lords of the Judicial Committee of the Privy Council on the appeal of Nawab Siddhee Nazzur Ally

Khán *v.* Ojoodhyáram Khan, from the High Court of Judicature at Calcutta, delivered the 17th day of March 1866.

PRESENT :

Lord Justice Knight Bruce.
Lord Justice Turner.
Sir James Colvile.
Sir Edward Vaughan Williams.
Sir Lawrence Peel.

This is an appeal from two decrees of the High Court of Judicature at Fort William in Bengal, bearing date respectively the 1st January* 1863 and the 12th January 1864, made by Mr. Justice Bayley and Mr. Justice Campbell in a Divisional Bench of the Court. The last of these decrees, which was made on a review of the former, affirmed it with some slight variation, which it is unnecessary to specify. The first decree reversed a decision of the Court of first instance, the Zillah Court of Midnapore, made in a suit in which the present respondent was the sole plaintiff. It was a suit for redemption and possession brought by him as mortgager against the defendants, who were, firstly, the representatives of the original mortgagees, deceased, *viz.*, Ashootosh Deb and Promotho Nath Deb, respectively ; secondly, a receiver of the estate of Promotho Nath Deb ; thirdly, the executors of one John Compton Abbott, deceased ; fourthly, one Alexander McArthur ; fifthly, the Nawab Nazim ; sixthly, the executrix of a deceased Mahomedan servant of the Nawab Nazim ; and lastly, the appellant. The connection of these parties respectively with the redemption suit of the plaintiff will be more particularly explained hereafter.

The decision of the Judge of the Zillah Court dismissed the suit of the plaintiff, the now respondent, with costs, on certain objections on points of law which will be subsequently stated, and which, in the opinion of the Judge of that Court,

* *Sic.* Should be June.

interposed a bar to the further prosecution of the suit. The plaintiff was not permitted to go into proof of his case on the merits. From this decision, the plaintiff appealed to the High Court ; and that Court, differing in opinion from the Court below on the legal points on which it had proceeded, reversed the decision and remanded the case for trial. The present appeal is brought from that decision.

The suit in the Zillah Court was brought for redemption and possession consequent on redemption of certain valuable estates, particularly described in the plaint, constituting the plaintiff's ancestral zemindáry. The title asserted was that of a mortgager seeking to redeem against mortgagees represented by their representatives in estate and against subsequent alienees of the zemindáry taking subsequently to the mortgagees, and, as the plaintiff contended, taking derivatively from them, and subject to his title to redeem them.

One of the points which was urged upon the argument, and which will be considered hereafter in its order, is whether the plaint sufficiently connects the present appellant, whom it states to be in possession of the property, with that mortgage-title originally in the Debs, the mortgagees, so as to show a *primâ facie* case for including him in this redemption suit.

The suit was stated by the respondent's counsel to be supplemental in its nature and objects, to one in the Supreme Court for redemption of the same property, brought by the same plaintiff against the Debs originally, and by amendment against John Compton Abbott. It was further stated by the respondent's counsel on this appeal, that as some of the defendants against whom relief was asked in this suit, *viz.*, the parties above enumerated after Alexander McArthur, were not subject to the jurisdiction of the Supreme Court, the plaintiff had sued in the Zillah Court of Midnapore by reason of that defect alone.

The plaintiff, as the eldest son, was the head of the Hindu family of distinction. A litigation had arisen between

him and other members of his family, to provide funds for which he had become a borrower from the Debs. Their advances were secured by mortgages taken at different times, one of which is stated to have been a Bengalee mortgage; the nature of the others does not appear. The mortgager and the mortgagees were Hindus; the mortgagees obtained, on the 25th May 1847, a decree of foreclosure in the Supreme Court against the mortgager. This decree was irregularly obtained and was subsequently set aside. Whilst this decree for foreclosure was in force, *viz.*, on the 10th June 1847, the Debs sold the zemindáry to John Compton Abbott. He, after his purchase, in execution of the decree of foreclosure, which he had also purchased, dispossessed the plaintiff. It does not appear that the mortgagees had been in possession. The contrary may be inferred. The possession then was first acquired whilst the foreclosure decree was in force, by John Compton Abbott, as owner, and not in privity with the mortgage title.

The effect of a foreclosure decree in the Supreme Court in a mortgage suit between Hindus, is equivalent to a decree establishing proprietary right, in the Company's Courts on similar suits on the like instruments.

On the 2nd February 1848, the plaintiff filed his bill of complaint on the equity side of the Supreme Court, to set aside this foreclosure decree, and to redeem the zemindáry. The bill was originally filed against the Debs only; but on its appearing, by their answer, that they had sold to Abbott, he was made a party to the suit. After he was made a party to the suit, he entered into an agreement bearing date the 15th April 1848, with Alexander McArthur, which agreement was filed with the plaint in the suit now under appeal, and is set out at page 5 of the Appendix. This agreement, after reciting that Abbott is well seized of, or otherwise entitled to the zemindáry, that the same was in arrear for revenue, and was so advertised for sale of arrears of revenue, proceeds to stipulate

as between these two persons, that McArthur shall purchase the zemindáry for the sum of three lakhs in case the estate does not sell for more at the revenue sale; that he will pay to the Government if he be declared the purchaser, the sum for which the estate may be sold, and that he will, within a certain time, after he shall be declared the purchaser, and shall have obtained the usual and due certificate of title, pay to Mr. Abbott the difference between three lakhs and the sum for which the estate shall have been sold. At this time the suit of the plaintiff in the Supreme Court for setting aside the foreclosure decree and for redemption, was pending. The Court, by its decree, dated the 16th November 1852, set aside the decree of foreclosure, and thereby made the zemindáry in the possession of Abbott, under his title from the Debs, subject to the right of redemption by the plaintiff. This right was expressly declared by the judgment in the following passage:—"We think, therefore, that there must be some decree for redemption against Mr. Abbott, who, if the objections arising upon the form of the record be answered (which objections the Court had over-ruled), can stand upon no better footing than the Debs whose title he purchased."

This judgment, then, in effect placed the possession of Abbott upon the footing of that of a mortgagee in possession, and from that time his above-declared title and his possession were in privity with the mortgage-title, and no longer constituted an adverse possession. By the reversal of the irregular foreclosure decree, the mortgager was restored to his original and legal relation to the mortgage-title.

After Abbott had been made a party to the redemption suit, Promotho Nauth Deb, one of the defendants, died, and the suit was revived, and other parties were made defendants by a bill of Revivor and supplement. The personal representatives of Promotho Nauth Deb were made parties together with the said McArthur and one George Lindsay

Young, and the Nawab Nazim and the representatives of Saduck Ally Khan out of the jurisdiction of the court were also named as defendants. These parties were stated by Mr. Leith to have been introduced as defendants in consequence of some discovery which had been obtained by the answers previously put in. The agreement, however, between Abbott and McArthur previously mentioned, of the 15th April 1848, was then unknown to the plaintiff, and the new defendants, above mentioned, were made parties upon allegations that at the sale for the arrears of revenue referred to in the agreement, McArthur had purchased *benamee* for Abbott and the Debs and that they had sold to Saduck Ally Khan who had purchased benamee for the Nawab Nazim. It would swell the narrative of the facts of the case which preceded the present suit to an unnecessary length if the precedent litigation were followed minutely through all its stages. It will suffice for the purpose of explanation to state that Saduck Ally Khan and the Nawab Nazim did not appear to the bill, and that upon McArthur's answer coming in, and it appearing by it, that he had conveyed to Saduck Ally Khan benamee for the Nawab Nazim, he was dismissed from the suit, and a decree for redemption was made against the other parties who had appeared in the suit. This decree bears date the 16th November 1852. It is set out *in extenso* in the Appendix. This decree, together with the agreement of the 15th of April 1848, and another document, are annexed by the plaintiff to his plaint in the suit now under appeal. The decree declared that the "plaintiff," as between himself and the defendants in those suits, "was entitled to redeem the mortgaged premises in the bill mentioned, notwithstanding the said final foreclosure order." The title to redeem was declared as to all the mortgaged premises, and not simply as to those which could be recovered in that suit, though the decree would of course bind those only who

were parties to the suit at the time when it was pronounced, and at that time McArthur had ceased to be a party to the suit. In a subsequent part of the decree it was further ordered, "that the master should enquire and state to the court what portion of the mortgaged premises had been sold since the same came into the possession of John Compton Abbott for arrears of Government revenue, or otherwise, and to whom the same respectively had been sold; and if he should find that any had been so sold, he was to take an account of all moneys which had been received by or come into the hands of the said defendants John Compton Abbott, or any person or persons by his order or for his use in respect of the purchase money arising from such sales, or of the surplus proceeds of such Government sales, if any, or which, but for his or their wilful default, might have been received." This portion of the decree furnishes one of the grounds on which the Judge of the Zillah Court proceeded in his dismissal of the plaintiff's suit.

The decree also directed certain enquiries in the Master's office; and in the due prosecution of those enquiries McArthur was subsequently, *viz.*, on the 17th of August 1854, examined before the Master. His examination is stated at length at pp. 18 and 19 of the Appendix. This examination first disclosed to the plaintiff the existence and contents of the agreement between McArthur and Abbott of the 15th of April 1848; McArthur's examination further disclosed that there was an agreement between him and Abbott; that the latter should suffer the revenue to fall into arrear, in order that the estate might be sold for arrears of revenue; and further that he, Abbott, should not bid for the estate. McArthur explained that his reason for wishing Abbott not to bid was to prevent its going above the three lakhs.

This discovery seems to have led to the institution of the present suit. The plaint in this suit was filed on the

30th of May 1860. In the plaint it is stated that possession was given to McArthur under the certificate of title, consequent on the sale for arrears of revenue, on the 1st of June 1848. The expression is somewhat confused, but this seems to be the sense of the plaint.

The plaint is for redemption and possession, that is, for possession consequent upon redemption. The relation to the suit of the several parties whom we have above mentioned to have been made defendants to it, sufficiently appears by what has been already stated, except that it must be added that the defendant Sidhee Nazzur Ally Khan Bahadoor, the appellant, is described as in possession, collusively with the Nawab. The plaintiff in his plaint alleges, with respect to all the parties whose interest arose upon and after the sale for arrears of revenue—that is, from the Nawab Nazim inclusively down to and including the present appellant, that they took fraudulently and collusively. It was objected for the appellant, that the plaint does not connect him with that charge of fraud and collusion, but the following words in the plaint, *viz.*, "the collusive, fraudulent and fictitious auction sale like a private sale," evidently refers to that sale which the plaintiff treats as the fraudulently interposed bar to his redemption, *viz.*, that at which McArthur was declared the purchaser; for, in a subsequent part of the plaint that sale and the agreement between McArthur and Abbott, of the 15th April 1848, are referred to, and the words "and the subsequent transfers," following on the words "the collusive, fraudulent, and fictitious auction-sale like a private sale," plainly mean, as the sense imports all those transfers between the parties whom the plaintiff makes, in person or by representation, defendants, by derivation of title from the Nawab Nazim and the words, "being declared collusive," import that the plaintiff seeks by his suit to have them so declared. The repetition here of the words "private sale,"

and the more formal conclusion at pp. 4, 1, 8 and 9 of the Appendix, *viz.*, "as the said sale took place in the mode ascribed above, so it can not be viewed in the light of a sale for arrears of revenue, but is to be treated as a private one," clearly and sufficiently mark on what legal ground, whether sound or unsound, the plaintiff meant to found his title to redeem as against those of the defendants whom his former decree in the Supreme Court did not reach. We think therefore there is sufficient allegation in the plaint to connect the appellant with the charge of fraud and collusion.

The plaintiff swore to the truth of his plaint. The answers of the defendants were then taken. Those of the appellant and of the Nawab Nazim are respectively at p. 10 and p. 16 of the Appendix. That of the appellant, at p. 10 in the 2nd and 3rd Articles, relies, on the pendency of the suit in the Supreme Court and on the plaintiff's right not being established here. In the 4th Article he relies on the special Law of Limitation, sec. 24, Act I of 1845, and says that as the suit is not brought within one year, the sale can not be set aside. In the 6th he relies on the general Law of Limitation, sec. 14, Reg. III of 1793. In the 7th he denies collusion. The answer of the Nawab Nazim raises the same question on the Law of Limitation of suits. He objects further, in his third article, that the Government should have been made a defendant, the suit being to set aside the revenue sale. He denies the charges of fraud and collusion, and insists that if the plaintiff has been wronged, he has his claim for damages against Abbott and others.

The plaintiff's vakeel was examined by the court as to the meaning of the plaint and the nature of the fraud charged. That examination, which is at p. 17 of the Record, does not carry the matter further than the plaint itself. The issues will be found at pp. 17 and 18 of the Appendix.

The 1st and 2nd issues are on the Law of Limitation, as above stated.

The 3rd relates to the Government not being a party, "the suit being to reverse the sale."

The 4th is on the effect of the pendency of the suit in the Supreme Court.

The 5th related to the form of the plaint.

The Zillah Judge decided against the plaintiff on the 1st, 2nd, 3rd, 4th, and 5th issues; the defect of form to which the 5th issue related, he declared to be amendable; but as he considered the suit to be barred on the other grounds of the limitation law, and the nature of the decree in the Supreme Court, he made no amendment.

The High Court, on appeal, decided that the suit was not brought to set aside the revenue sale; that it was not barred by effluxion of time; that the pendency of the suit in the Supreme Court, at the time of the institution of this suit (afterwards in the High Court, which had been substituted for the Supreme Court), and the decree given in that suit, were no bar to the prosecution of the claim.

The Court considered that McArthur and Abbott could not allege their own wrong, and that a trust might be fixed on the estate of McArthur, in favor of the appellant, without disturbing the Government sale; and with this declaration of the law they remanded the cause for trial.

Before entering upon the particular questions raised by this appeal, it may be right to observe, that the courts in India, in disposing of the case, were bound to proceed, as the High Court appears to have proceeded, upon the facts alleged by the plaint, and upon the assumption of the truth of those facts. Where a plaintiff on certain alleged facts asks relief, and is unable to obtain a trial of the facts, and a hearing of the facts, that he may establish, by reason of the conclusions of law which the Judge forms in the case in its then condition,

justice requires that the court should proceed upon the plaintiff's allegations. The case must be determined as it had arisen on a demurer to a pleading or to evidence where such procedure exists. Courts cannot be justified in refusing to allow cases to go to proof upon any other assumption than that the facts alleged are capable of proof and are proved. This assumption of the truth of the facts alleged must, however, be limited to the consideration of the legal effect of the facts alleged upon the bars raised against the trial of those facts, and their Lordships, therefore, abstain from expressing any opinion upon the points urged at the bar which do not arise out of the plaintiff's pleadings and documentary proofs, or which, if they arise, are not necessary to the decision of this appeal. Observations were made by Mr. Leith upon the omissions in, and nature of, the answers put in by the defendants to the respondent's plaint; but their Lordships for the above reasons do not think it right to refer to those observations. The answers can only be looked at for the purpose of ascertaining whether they raise the legal bars insisted on. Throughout the following observations their Lordships must be understood to proceed upon a hypothetical case of fraud, and to express no opinion on its truth or probability.

The first bar to the plaintiff's claim set up by the appellant was that of limitation of suit by effluxion of time. The first period of limitation insisted on by the appellant was that under Act I. of 1845, Sec. 24. That objection necessarily supposed the suit to be brought to set aside the revenue sale; this remedy, however, the suit did not seek, but, relying on the agreement of the 15th April, 1848, antecedent to the sale, the plaintiff claimed a right, as it were, to confess and avoid that sale, by imposing a trust on the estate which passed under it. The question, therefore, as to this period of limitation is, whether the plaintiff is well founded in claiming the right thus claimed by him, in effect whether the plaintiff

can treat the auction sale as against those defendants who rely on it, as a private sale. Before dealing with this point, however, it will be convenient to consider the other period of limitation on which the appellant relies as a bar, the general law of limitation of twelve years. As to this, it is sufficient to observe that on the allegations in the plaint that bar cannot be set up; for the title and possession of the defendants against whom the redemption is prayed by this suit, is expressly alleged to be founded on fraud. This period of limitation, therefore, may be laid out of the case, and we come then to what has appeared to their Lordships to be the real question in the case (the question to which we have above referred), whether the plaintiff can, in point of law, insist, notwithstanding the auction sale for arrears of revenue, that as against him, that sale ought to be viewed as a private sale. The title to redeem in this suit as against the parties subsequent to Abbott is rested on that ground, and the case which the plaintiff alleges by his plaint and by the documentary proof appended to it is one of fraud between Abbott and McArthur, to deprive him of his title to redeem the zemindáry, by means of a secret purchase of it between them for three lakhs of rupees, including a fraudulent device of a sale by auction for arrears of revenue, such arrears to be designedly incurred. By that agreement Abbott would become directly interested that the estate should sell for a low price, since the proceeds would be subject to the mortgager's claim, and the lower the price obtained at the auction sale, the larger the share would be which Abbott would take of the three lakhs. Parties to a secret fraud intended to be secret, and the price realized at the auction sale would alone be known. These facts and conclusions are directly taken and derived from the plaint, and the agreement of the 15th April annexed to it, and from McArthur's examination before the Supreme Court, which are all parts of the plaintiff's proofs.

If these facts cannot be displaced, the agreement was undoubtedly a gross fraud on the mortgager committed by both the actors in it, *viz.*, Abbott and McArthur. But it was argued that even if this case were true, the remedy under the Act I of 1845, was for damages only. This argument was in conformity to the opinion of the Zillah Judge. But it is to be observed that this argument assumes the very question under discussion, which is, whether the Act extends to the present case. Mr. Justice Bayley thought that the Act was not designed to protect a fraudulent purchaser. He put his decision on the ground that a man is not allowed by law to take advantage of his own wrong ; and he treated the case of such a purchaser as beyond the protection intended to be given by the Act to purchasers under an auction sale.

No authority founded on the decisions of the late Company's Courts was referred to by the Judges of the High Court, and none such has been quoted before their Lordships on the argument of this appeal. The case is, however, not altogether new in India. The question was considered in the decision of the Supreme Court in the cause so often referred to, to which this suit is alleged to be supplemental. Mr. Justice Colvile, in that judgment, whilst he declares a Government sale for arrears of revenue to give a title against all the world, with certain exceptions, engrafts on the general rule this exception, that a fraudulent purchase at such auction sale by a mortgagee will not defeat the equity of redemption. The subject is treated in Mr. Arthur Macpherson's book on Mortgages, at page 91, who there quotes a prior decision, Kelsall *v.* Freeman, of the same Supreme Court to the same effect. The author, now a Judge of the High Court at Calcutta, expresses a similar opinion, and as his book is one well-known and frequently consulted in India, the decision under review cannot be regarded as unsettling a previously settled state of the law, and as raising for the first time an

exception to the general protection which this legislative title affords to purchasers. In support of this view we may refer to other authorities. In the celebrated opinion of C. J. D. Grey in the House of Lords in Duchess of Kingston's case, he says : "But if it was a direct and decisive sentence upon the point, and as it stands, to be admitted as conclusive evidence upon the court, and not to be impeached from within, yet, like all other acts of the highest judicial authority, it is impeachable from without, although it is permitted to show that the court was mistaken, it may be shown that they were misled." "Fraud," his Lordship proceeds to state, "is an extrinsic, collateral act, which vitiates the most solemn proceedings of Courts of Justice." Lord Coke says : "It avoids all judicial acts, ecclesiastical or temporal." The Chief Justice then proceeds to state that fines and recoveries may be avoided for covin by strangers, and gives other illustrations of the same principle. The case of Collins *v.* Blantern, 2 Wils, 341, is an authority to show, if any were needed, that a court will strip off all disguises from a case of fraud, and look at the transaction as it really is. In addition to these authorities, it may be observed that principle embodying this distinction pervades the law. Under sales in market overt, the purchaser acquired a title against all the world ; but this protection did not extend to a fraudulent buyer who knew that the seller had no real authority to sell. If the thief who sold in market overt repurchased the article, the defrauded owner could then assert his title against such re-acquisition. See Viner's Abridge, tit. Market overt. In Bacon's Abridgment, tit. Fraud, p. 768, G. William & Dodd's Edition, it is said : "If goods are sold in market overt by covin between two, on purpose to bar him that has right, this shall not bar him thereof (2 Inst., 713, Cro. Eliz., 86)." The same principle applies to bills of exchange and other negotiable instruments, made or which become payable to bearer, and pass by delivery.

Again, a title by estoppel is a well-known title. The doctrine that a man cannot take advantage of his own wrong, as used and applied by Mr. Justice Bayley to this title to redeem, is a correct application of that doctrine, if the fact support him. Assuming, as we must, the agreement to be proved, was this sale, as between Abbott and McArthur, really meant to be a sale under the revenue laws for arrears of revenue, or was it a device, part of the machinery, as it were, to effect a fraud ! Under a private conveyance, in the state of the title and of these parties, the estate if conveyed by Abbott to McArthur, would have been redeemable by the plaintiff. If the sale were intended to have been a real sale under the revenue laws, what would have been Abbott's interest ? His estate would have been extinguished, and all that he would have been entitled to would have been a mortgagee's interest in the surplus of the money realised by the sale over the arrears. Would a real vendor seek to reduce that surplus ? The price was a fixed sum of three lakhs ; the parties contemplated a sale under that sum by the auction proceeding ; and it may be well to repeat that it was Abbott's interest to cause, as far as he could cause it, that the auction price should be low, since, though the auction sale was public, his agreement was not known to the mortgager. What then, if the sale were to be real, could be the consideration which McArthur was to receive for the excess of the three lakhs over the auction price ? The estate would have passed to him for the lesser sum. This suffices to show that, as between them, the sale was meant to be under the terms of the agreement in the case that has happened, which was a case contemplated by Abbott at least. These parties, therefore, are stopped or precluded by their acts from setting up, as against a third person, the mortgager, the object of their fraud and stranger to the agreement, the illegality of the agreement itself. The plaintiff is entitled to say, this agreement is the

real contract. Two cases decided by the House of Lords upon the effect of the Encumbered Estates Act for Ireland, Rooke *v.* Errington, 7 Ho. Lds., 617, and Power *v.* Reeves, 10, Ho. Lds., 645, were referred to by the appellant's counsel, in support of the appellant's case, but it is sufficient to say that these were not cases of a fraudulent use of the provisions of an Act of Parliament for effecting a fraudulent purpose. They do not appear to their Lordships in any way to affect the present case. The various questions that have been put in the course of the argument, of notice of knowledge of purchase by an innocent principal through a fraudulent agent, need not here be answered. They do not arise on the facts before us. Those facts may not be the real facts. Any opinion expressed upon these points would be not merely an *obiter dictum*, it would be, by anticipation, an opinion hazarded on supposed facts, and evidence, if the cause be still untried, might be made to fit them.

This decision proceeds entirely upon the ground that, as between these parties, the sale must now be considered as a private sale. The decision has no application to interest derived under a real auction sale. The opinion of their Lordships under this point disposes of the first bar of limitation by effluxion of time under Act I of 1845.

The questions remaining for consideration are, whether the pendency of the suit in the Supreme Court, or the nature of the decree, or any acting under that decree present a bar to the prosecution of the suit, which the decree under appeal has remanded for trial on the facts. The mere pendency of a suit cannot operate as a bar since the suit in the zillah Court was intended to be simply in furtherance of, and supplemental to, it. The nature of the decree requires more consideration. Had that decree been one which could not have been modified or varied by further proceedings in the Supreme Court itself, in the nature of a supplemental suit

on the new matter discovered since the decree, the objection might have been tenable, but the law of the Court is otherwise. Had the Nawab and the parties, defendants, subsequent to him, been subject to the jurisdiction of the Supreme Court, the relief which is now sought to be obtained against them in the Zillah Court, might have been prosecuted by a further suit in the nature of a supplemental suit, properly constituted in the Supreme Court. The decree, as to the account and the enquiries directed as to the alienated lands might, upon the new facts, have been varied there, and the same relief may be obtained in this suit. The defendant in possession is charged in substance as assignee of the mortgage, and in that character redemption is prayed against him. The relief is subject to the same conditions and equities which would have attached to it in the Supreme Court.

It would be unjust to exclude the relief by reason of mere personal exemption from the jurisdiction of the Supreme Court. To rely on this bar would be to plead an impediment against a suit instituted to remove it. The direction to enquire as to the alienated lands, and the relief consequent on that enquiry, are introduced for the benefit of the mortgager, in case the pledge should turn out to be irrecoverable through the fault of the pledgee. Such relief in this case is in the nature of compensation for a wrong. If it be subsequently discovered that the pledge can be restored or recovered, the mortgager may waive the benefit, and prosecute his right as to the thing itself. Lastly, with reference to the dealing under the decree, it is to be observed, that the mere prosecution of an enquiry, especially under a mistaken impression, would not raise a case of election, or amount to a waiver of a tort. This is all that the facts alleged disclose. They disclose that, at the time of the decree, the estate was supposed to be irrecoverable, and that the Court, in directing the enquiries which it directed, acted on that impression. They

do not disclose what has been done in the way of satisfaction under the decree. The case alleged in the suit is one of fraudulent misdealing with the property pledged. The case of Hope *v.* Liddell, 21, Beavan, p. 183, quoted by the Attorney-General, was not a case of fraud. The observations of Lord St. Leonards quoted by the Master of Rolls, relate to a *bonâ fide* purchaser for value and to the proper mode of working out his equity against that of a plaintiff whose property has been alienated by mistake. The facts in the case of Hope *v.* Liddell, differ widely from the alleged facts in the case under appeal, and the grounds on which that decision proceeded, do not exist in this case, as it now appears. In the case of Hope *v.* Liddell, the original testator, Dr. Spencer, devised the lands in dispute to one Thompson, a trustee, on certain trusts. Thompson devised all his estates, by general words, to his sister, Grace Thompson. This devise was erroneously supposed to pass the trust estate, which really went by descent to the heir-at-law of the trustee. One of the *cestui que trusts* contracted to sell the estate of the Defendant Liddell. The sale was perfectly *bonâ fide* on both sides. The price was adequate, and was paid. It was paid by the purchaser into the hand of the *cestui que trusts* by the direction of the supposed trustee, Grace Thompson. The purchaser was, by the trust deed, not required to see to the application of the purchase-money. The Court said that if Grace Thompson had really been the devisee in trust, as she was supposed by all to be, the transaction could not have been impeached. The defect was the want of the legal estate. On second question in the cause, the Court found that the children, the objects of the trust, had, with full knowledge of all the circumstances and of their rights, taken the purchase-money in lieu of the land. In this case, however, at the time of the decree in the Supreme Court, it was supposed that the land was gone irredeemably. In that state of belief, there could have been no matters between which to choose. Afterwards when it was discovered

that the auction-sale had been contrived under the agreement of the 15th April 1848, a new state of facts appeared. The matters between which to elect would then have been the land, and the full price the three lakhs, not simply the auction price. Nothing appears further on the alleged facts, except that the enquiry before the Master went on, but that it might well do, subject to final correction and due adjustment. There is no ground therefore for applying the decision of Hope *v.* Liddell, as an authority to govern this case in the present state of the facts.

The same cause which has induced their Lordships to refrain, in the earlier part of this judgment, from expressing an opinion upon the law applicable to an uncertain state of facts, operates also here to induce reserve. Distinction may exist between claims of this nature, founded on actual fraud, by a combination between several wrong-doers, all liable to make satisfaction up to one complete satisfaction for the injury done, between whom there may be *inter se*, no right to contribution, and remedies founded on contract, or converted by the choice of the sufferer into claims *ex contractu;* but for the reasons already given, this subject cannot now be pursued further. Their Lordships will humbly recommend to Her Majesty that this appeal be dismissed with costs.

High Court of Judicature at Fort William in Bengal.

Appellate Jurisdiction.

September 4th 1867.

(Before Justices H. V. Bayley and J. B. Phear.)

Regular appeal from the decision passed by the Officiating Judge of Midnapore, dated 29th September 1866.

Case No. 423 *of* 1866.

Sidhee Nazzur Ali Khan Bahadoor, one of the Defendants ... ... *Appellant.*

vs.

Rajah Ajoodhyaram Khan, Plaintiff ... *Respondent*

Messrs. Peterson, Barrow, Dhur and Gregory for Appellant.

Messrs. Doyne, Woodroffe, Allan, and Baboo Onookul Chundra Mookerjee for Respondent.

Baboo Abhoy Churn Bose for Nawab Nazim.

Suit laid at Rs. 2,72,000.

Case No. 55 *of* 1867.

Muntazumool Moolk Mohsenood Dowlah Fareedon Jah, Nawab Syud Munsoor Ally Khan Bahadoor, Nusrutjung, Nawab Nazim of Bengal .. *Appellant.*

vs.

Rajah Ajoodhyàram Khan, Plaintiff,

and

Sidhee Nuzzur Ally Khan Bahadoor, Defendant ... ...*Respondents.*

Baboo Ashootosh Chatterjee for Appellant.

Mr. R. T. Allan for Plaintiff, Respondent.

Mr. Gregory for defendant, Respondent.

Suit laid at Rs. 2,72,000.

Mr. Justice Phear.—This is a suit brought to recover possession on the usual terms as to redemption of certain lands and zemindaries in Midnapore, which were mortgaged by the plaintiff some 23 or 24 years ago, and which have since passed into or through the hands of the four last-named defendants and of other persons now deceased, but represented by the remaining defendants.

The facts of the case are by no means simple ; and on nearly all material points the versions of them given by the several litigant parties are conflicting. The outline of the story, so far as it is free of contest, is pretty nearly as follows :—

Rajah Ajoodhyaram, the plaintiff, while a minor, inherited from his father considerable estates in Midnapore, and became involved with his half-brother in expensive litigation

with regard to them. This, with possibly other causes, reduced him to great straits for money, and soon after he attained his majority, he borrowed upwards of Rs. 1,88,000 from Baboo Ashootosh Deb and Promotho Nauth Deb, jointly, who were at the time moneyed men, carrying on business at Calcutta.

Both these gentlemen have long ago died, but they are represented in the matter of this suit by the three first-named defendants. The Rs. 1,88,000 advanced in several sums at different dates, during the year 1843 and 1844, (1844, Mortgage), and the lands now sought to be redeemed, together with other property, were from time to time (the operation ending in a Bengalee deed of further charge, in the latter year) mortgaged to the Debs to secure its repayment. The loan was not repaid according to the terms of the mortgage or mortgages, and consequently in September 1845, the Debs instituted a suit for foreclosure against the present plaintiff Rajah Ajoodhyaram in the Supreme Court of Calcutta, which suit terminated on the 25th May 1847, in an absolute decree for foreclosure.

1845. Foreclosure suit instituted.

1847, May 25th. Decree absolute for foreclosure.

On the 16th of the following month the Debs executed a conveyance of the foreclosed property to one John Compton Abbott for the sum of Rs. 2,34,000, of which Mr. Abbott paid down Rs. 1,60,000, the payment of the remaining Rs. 74,000 of the consideration money being secured by a mortgage of the same property, contemporaneously made by Mr. Abbott to the Debs. Mr. Abbott as well as the Debs are now dead, and his place in the present suit is taken by his executors, the defendants, Nos. 4 and 5. Mr. Abbott did not obtain undisputed enjoyment of the Rajah's estates, without some trouble, but according to his own account he appears to have got into possession by October 1847.

1847, June 16th. Conveyance to Abbott.

1847, October. Possession obtained by Abbott.

In March 1848 he failed to pay the Government revenue, which then became due on the particular portion of the estates now sought to be redeemed, and consequently this portion was sold by the Collector, at public auction, on the 29th April 1848, when a Mr. McArthur became the purchaser at the price of Rs. 85,000. Mr. McArthur did not purchase on his own behalf, but acted in the matter (whether with or without authority is an issue in the case) as agent for His Highness the Nawab Nazim of Bengal, who has accordingly been made a defendant in this suit. Mr. McArthur himself was also originally made a defendant, but he died a few months ago, and the suit has been revived against his representatives. Although McArthur bought in the capacity of agent and not as principal, this circumstance does not seem to have been disclosed to the Revenue authorities, and the Collector made out the certificate of sale to him in his own name.

Kist of the 1848, March, Default in Revenue.

1848, April 29th, Collector's sale.

Three months after the Revenue sale, *viz.*, on the 31st July 1848, McArthur executed a Kabala of sale of this property to one Saduck Ally, by which McArthur conveyed as owner without any mention of the Nawab, and Saduck Ally also pretended to take as absolute owner. But it is agreed on all hands except by the Nawab Nazim himself, that this was merely a conveyance to Saduck Ally benamee for the Nawab Nazim. Saduck Ally died in March and the last named defendant, Nazzur Ally, claimed to take all his estates and effects as his executor or administrator. In this capacity on the 15th April 1850, he executed a ladavee or deed of release to the Nawab Nazim of this very property. However, in the year following, a conveyance bearing date 15th September 1851, and purport-

1848, July 31st, McArther's Kabala to Saduck Ally.

1850, March. Saduck Ally died.

1850 April 15th, Ladavee by Nuzur Ally to the Nawab.

ing to be made by the Nawab Nazim to the defendant, Nuzur Ally, in terms, reconveyed the property back to the last named defendant. For this conveyance Nuzur Ally maintains that he has given valuable consideration, and it is admitted that he is *de facto* in possession of the property. Under these circumstances, he is, of all the defendants, the one against whom it is material that the plaintiff should make out his right to redeem. Nuzur Ally's possession, nevertheless, does not now insure to his own benefit, solely ; for Emamee Bibee, sister and heiress of Saduck Ally, having disputed his right to represent her brother's estates, and having also set up that the alleged consideration for the reconveyance from the Nawab really proceeded from Saduck Ally, and not from Nuzur Ally himself, brought a suit against him in the Civil Court at Moorshidabad, and eventually the litigation thus set on foot, laid to a compromise between this lady and Nuzur Ally, by which she took a three-fifth share and a two-fifth share in the property now before the Court. Emamee Bibee, who is the last defendant but one, and Nuzur Ally, are thus directly interested in defending the possession of the land, as well as in repudiating all liability to account. The other defendants are chiefly concerned in resisting the plaintiff's claim to have the accounts taken against them.

1860, May 31st. The present suit was filed.

The plaintiff instituted this suit on the 31st May 1860, in the zillah court of Midnapore. He was met on the part of those defendants who put in written statements by a preliminary objection, founded on the provisions of Act I of 1845, to the effect that inasmuch as the Revenue sale of April 1848 had not been impeached within the period limited by the Legislature for that purpose, it could not now be set aside, but must be allowed, its full operation ; and, consequently, the purchaser at that sale as well as every other person claiming through him, took the property free of all encumbrances which had been created

upon it, since the date of the Permanent Settlement. The plaintiff pointed out that, according to the allegations of his plaint, the default in the payment of Revenue, and the Collector's sale had been brought about by the scheming of Abbott and McArthur, with the intention to defraud him (the plaintiff); and under these circumstances, he urged that the provisions of Act I of 1845 did not apply.

1860, November 26th. Judge's decisions dismissing.

The Judge, however, thought otherwise, and held that the plaintiff's right of action was altogether barred.

The plaintiff then appealed to this Court from the Judge's decision. The Division Bench, which heard the appeal, was of opinion that the judgment of the Court below, was wrong, and it laid down that the provisions of the Revenue Law were never intended to cover a fraud, and would not prevent an owner, who had been fraudulently deprived of his property by a Collector's sale fraudulently effected, as against him, from pursuing that property, with a view to enforce him against the holder of it, any equitable right to a reconveyance to which he, the owner, might be entitled. On this ground it remanded the case to the first Court for trial on its merits. The order of remand was made on the 1st January 1863, and confirmed on revision of the 12th January 1864.

The defendants appealed to the Privy Council against this order of remand; but without success; for their appeal was dismissed and the decision of this Court was affirmed by a judgment of that Judicial authority delivered on the 17th March 1866.

17th March, 1866. Judgment of Privy Council.

The hearing of the case on remand took place before the Zillah Judge of Midnapore, who, on the 29th September 1866, gave a decree in favour of the plaintiff, declaring him to be "entitled to the possession of the estate in suit, upon a settlement of account by redemption of mortgage."

Against this decision the defendants have appealed to

this Court upon seventy-seven so-called grounds of appeal. These appear to me, however, rather to constitute an abstract or précis of the argument proposed to be addressed to the Court of Appeal by the Counsel for the appellants, than to be grounds of appeal in the proper sense of the term. At any rate, I do not think it necessary now to regard them with any particularity, for after the best consideration which I have been able to give them, seem to me to amount on the whole to be one sweeping objection, that the Judge miscarried in the conduct of the trial wherever he had any discretion to exercise, and that he was wrong either in law, or in fact, or in both, with regard to every conclusion unfavorable to the defendants at which he arrived. In this condition the appeal has come before this bench, and it has therefore been incumbent upon us to entirely re-try the case upon such materials duly sifted, as the record furnishes us with, and such further evidence as we might think proper to procure.

In this task we have had the advantage of most elaborate argument furnished us by both sides. The hearing on the whole, has extended over the space of eleven days. The result is, that although the transactions which we have been called upon to enquire into, are both numerous and unusually complex in themselves, I cannot now say there is any doubt remaining in my mind, as to the aspect of such of those facts as are material to the contest between the litigant parties.

In order to explain my judgment, I feel obliged to set these out as I view them, though I fear that in so doing, I shall unavoidably be carried to considerable length.

A principal occurrence in this matter which up to this point I have omitted to mention, is a suit which, on 2nd February 1848, the present plaintiff instituted in the late Supreme Court of Calcutta, at first against the Debs only ; but afterwards by successive amendments of the bill (*viz.*, on 2nd May 1849, and 4th September 1850, respectively) against

Abbott and McArthur, the Nawab Nazim, and the representatives of Saduck Ally also, to obtain a re-opening of the foreclosure decree of May 1847. For the moment it is only necessary to say that this resulted in a decree for re-opening the foreclosure as against the Debs and Abbott, that the suit was by consent dismissed as against McArthur (the matter of the agreement between him and Abbott, to be afterwards mentioned not having been then disclosed), and the other defendants never came within the jurisdiction of the Court. That suit is still pending, and the plaintiff as yet obtained no relief under it. The present suit, in some senses, runs parallel with it, and has been spoken of as being supplemental to it; but the two are led and prosecuted in jurisdictions which are independent of, and so to speak, foreign to each other, and it is only in regard to the execution of final decree that it can become strictly necessary in the one to look at what has been done in the other. However, the statements in the answers, made by, and the conduct of, the various parties in Supreme Court suit, even in the absence of any *res judicata*, furnish valuable evidence here against them respectively; and it is in this way that the record and documents of that suit have been used before us by both parties.

I will now go back to the earlier stages of the narrative. It has been mentioned that the conveyance of the lands, at present in suit, from the Debs to Abbott was executed after these gentlemen, the vendors, had obtained a forclosure decree which cleared their title to these lands from all equities of the present plaintiffs, and before Abbott was made a party to the suit for reopening it. It also appears, from what I have just said, that all the alienations which connect the latter defendants with the original mortgages, took place before the re-opening of the Debs' foreclosure decree was brought about. It has therefore been argued with much show of reason that these dealings with the property must be treated as having

taken place after the final determination of litigation, and must not be considered to be affected by the circumstance that that litigation itself was afterwards revived by reason of irregularity in the conduct of the party who had obtained the decree. It was urged, that at any rate, strangers to that suit for foreclosure were entitled to claim the benefit of the decree absolute for foreclosure being held to be final and conclusive, notwithstanding that it was, in fact, subsequently set aside. I shall not at present enter upon the many points for consideration which arise out of their contention, not the least prominent of them being, whether the Court, within whose local jurisdiction the immoveable property sought to be recovered is situated, ought to hold itself bound by a decision of a foreign Court, as to the equities relative to that property between the parties claiming it adversely to each other. But even, if it be so bound, as it may be, I should find it difficult to say that a decree for foreclosure which only declares that, as between plaintiff and defendant, the former is entitled to hold and alienate the property free from the equities of the latter, could be insisted upon by a stranger, when it has been declared to have been inoperative *ab initio* between the parties.

If it ought not to have been passed as against the mortgager, how can any alienation, however innocent, even though made in the faith of it, be in a better condition in equity as regards the claims of the mortgager, than if it had not been made? However, as I have said, I shall not enter upon these points, because it seems to me that the case against Abbott, with which we are first concerned, is entirely disencumbered of them. His conveyance from the Debs is dated, it is true, after the decree absolute for foreclosure was made; but in his answer to interrogatories submitted to him by the present plaintiff, filed on the 20th July, in the suit for reopening the foreclosure to which I have referred, he admitted his treaty with the Debs, for the purchase of the mortgaged property

commenced in March 1847, and it is clear that this treaty must have been completed soon afterwards, for in the same answer, Abbott says that he paid to the Debs Rs. 80,000, on the 30th April 1847 as a portion of the consideration-money of that purchase; and again, on the 10th May 1847 a further sum of Rs. 70,000, on the same account. Remembering then that the decree of absolute foreclosure was not given till the 25th May 1847, it appears to me obvious that the alienation by the Debs to Abbott took place while the original foreclosure suit was pending, and therefore cannot be allowed to stand between the present plaintiff and those rights to redeem, which that suit in its ultimate issue may have left open, and affirmed to him. There are also other facts which lead to consider that Abbott cannot derive any protection from the foreclosure decree, whatever may be supposed to be the case in this respect, with regard to persons (if such there were) who had purchased innocently during the interval, when the decree was not known to be invalid or voidable. For Abbott seems to have been the hand by which the Debs conducted that suit; he exhibits in schedule annexed to his answer of the 20th July 1849, items for money paid by him to the Debs' solicitor in that suit on account of taxed bills of costs at various times from its very commencement in September 1845, to its termination in May 1847, and credits the Debs with payment to him of certain lump sums during the same period as cash advanced on account of the costs in that cause, leaving, on the whole, a balance due to him from the Debs of Rs. 1,752. He was undoubtedly, looking at the whole of his conduct, agent of the Debs throughout, and had full knowledge of the plaintiffs' equities against them. The mere fact that he purchased from his principal in the *bonâ fide* expectation that a forthcoming decree would give them power as against the mortgager to sell free of his equities, cannot enable the agent, when it is discovered that the

decree in question had not that effect, to say to the mortgager that nevertheless as between them, it must be treated as if it had. I have no doubt that we ought, as between the plaintiff and Abbott, to view the conveyance from the Debs as an assignment of the mortgage, and to hold that Abbott took the property subject to all the plaintiffs' equities.

Next, then, comes the question, what was the legal operation of the Collector's sale ? The default which led to it, was to my mind clearly of purpose as regards Abbott. I think that he had the means in his power to have paid the kist if he had chosen, and, I believe, that he failed to pay, simply with the intention of giving effect to an agreement of sale, which he had made with McArthur. As regards the voluntary character of the default, the evidence is ample, and I do not propose to specify it now. The agreement with McArthur is perhaps not so unimpeachably made on. In the first place, only secondary evidence of its terms has been laid before us, but we have thought this receivable under the circumstances of the case. The original, if such an agreement was even made, would have naturally remained in the possession of either Abbott or McArthur, both of whom, by their representatives, are parties to this suit. Notice to produce this has been duly given to all the defendants who, together, completely represent Abbott and McArthur, both in person and in estate, but it has not been forthcoming. Mr. J. C. Michael proves the failure of an agreement between Abbott and McArthur, and Michael's evidence satisfies me that the draft which is put in, endorsed the 15th April 1848, is a correct copy of the agreement which was executed by those two persons. Mr. McArthur's own evidence, given before the Master in the suit of the present plaintiffs against the Debs, Abbott and others for reopening the foreclosure, if receivable, puts this beyond all doubts. I think this evidence is receivable, certainly as against Abbott and McArthur, for the witness is now dead.

Abbott and McArthur were then in the same position relative to the present plaintiff as they now are, and the matter in issue between them was essentially the same as in this suit. Besides, as against Abbott, the deposition was made in a suit which was pending when he bought: inasmuch as the plaintiff's suit, for reopening the foreclosure may, with propriety for this purpose, be termed a revivor of, or continuation of the foreclosure suit. This deposition also serves to confirm the conclusion at which I had arrived on other evidence that the default by Abbott, in payment of the Government revenue, was deliberately intentional. Moreover, if there had not been previously an undertaking to default on the part of Abbott, it is difficult to conceive why McArthur should have entered into the agreement at all; the whole burden of it falls upon him, and he gets no benefit whatever from it. If defaults past redemption had occurred such as would have been the case if Abbott had failed to pay the revenue from want of means, there remained no consideration in Abbott's power to give for the agreement. I can therefore only account for the execution of such a document by McArthur, after default had been made, by the supposition that Abbott exacted it from him on the strength of being able to prevent the sale, by payment within the period allowed by law. In substance the agreement amounts to this, *viz.*, that McArthur covenanted with Abbott to purchase the lands at the Collector's sale, provided that they should not be sold for any sum exceeding three lakhs of rupees; and if they should be sold for less than three lakhs of rupees then he covenanted to pay to Abbott the difference in amount between the sum of money at which he should become the purchaser of the lands and the sum of three lakhs. It is suggested that McArthur who was not acting as principal, but as agent on behalf of another, entered into this agreement, in order to secure for himself the honorarium or commission of 30,000 Rupees which Abbott afterwards gave him in gratification at the

bargain which had obtained. But no stipulation whatever is made for this in the agreement itself, and therefore it would appear that although McArthur could trust Abbott, the latter would not trust McArthur a consideration which seems once more to point to the conclusion that Abbott had some source of pressure which he could exert on McArthur in the matter, *viz.*, the power of stopping the sale if he chose. I cannot say that I have the least doubt of the whole transaction having been concerted between Abbott and McArthur before the default was made; Abbott was to sell for three lakhs; but for purposes of title, the sale was to be effected through the instrumentality of the revenue officer, and inasmuch as this course of proceeding would almost certainly lead to an apparent price much below three lakhs, the formal agreement of the 15th April was drawn up, not to be talked about, but to be shewn to the principal, whenever it might be necessary to account for the disbursement of a larger sum than the auction price. In my judgment, an arrangement of this kind, effected with the view of causing a statutary title to accompany a private alienation, is not within the policy of the Act. The injustice of barring any known or possibly existing private claims against the property, is not balanced by the attainment of any public good, or any object proposed by the Legislature, and the result of giving the statutable protection to the purchaser under these circumstances if the protection proved of value at all, would be to that extent to inflict injury upon innocent persons. I am disposed to think that a Court of Equity would, in such a case, always attribute the transfer of property to the date of the initial contract between the parties, and not to the subsequent Collector's sale. But, however, this may be. the present case certainly appears to me independent of any nice equitable doctrines, for, I believe, that Abbott and McArthur entered into the before-mentioned arrangement with each other, expressly with the view of defrauding the plaintiff.

If the arrangement had borne an honest complexion, there would have been no need for secrecy with regard to it. As soon, at any rate, as the auction-sale was completed, it would have been avowed on the first occasion for disclosure occurring. But Abbott and McArthur were persistently silent about it until the last. When directly interrogated by the plaintiff, in the suit for reopening the foreclosure, both these persons, on oath, mentioned 85,000 rupees and no more as the purchase-money. Abbott, in his answer of 20th July 1849, says that "he had and was in possession of the mortgaged premises from the third day of October in the year of Christ 1847, until the said premises were sold by the Collector of Midnapore for arrears of Government revenue on the 29th April 1848, and that he has not since or at any time sold or parted with, or conveyed any part of the said mortgaged premises ; but that the said Collector sold the principal portion thereof for arrears of Government revenue to the following persons, and for the following considerations, on the 29th April 1848, that is to say "Purgunnah Midnapore, &c., purchased by Mr. Alexander McArthur for Co.'s Rs. 85,000, and so on." The object of Abbott in keeping back all mention of the remaining Rs. 2,15,000, was obviously most fraudulent towards the plaintiff. He at least, was not ignorant of the plaintiff's claim; and if he had confidence in the efficacy of the foreclosure decree, and of the Collector's sale in extinguishing them, why did he hesitate to tell the truth? It is certain, at any rate, that he deliberately perjured himself in his answer to avoid the risk of being obliged to account to the plaintiff for the Rs. 2,15,000. But how could he venture to do this, unless he had reason to be assured that the real facts would not come out through McArthur? No doubt on some ground or another, he did place reliance on McArthur, and for a time McArthur did not fail him. Thus we find that McArthur, having been made a party to the suit in September 1850, in answer to the following interrogatory,

viz., "Whether it is not the fact that the said Alexander McArthur bought the said zemindáries and talooks for the said sum of Co.'s Rs. 85,000, or some, and what other sum of money and what date did he buy them."—Declared on oath, that it is the fact that this defendant by the directions and on account of His Highness the Nawab Nazim of Bengal, bought the said zemindaries and talooks for the said sum of Co.'s Rs. 85,000, on the 28th day of April 1848.

This answer was filed on the 11th January 1851, therefore there can scarcely be any doubt that from July, 1849, to January 1851, Abbott and McArthur were co-operating in a fraudulent endeavour to keep the plaintiff in the dark as to the real nature of the transaction between them in April 1848, and that they did not hesitate to deliberately commit perjury for that purpose. Is not the inference irresistible that in the transaction itself, they were actuated by a common dishonest motive against the plaintiff? And what the motive was, is not difficult to see. They both wanted to rid the property of a very troublesome claimant. Abbott had been the agent of the Debs during the whole of the foreclosure suit, which terminated in May 1847, and it is hardly too much to presume, in the absence of anything to the contrary, that he was early made acquainted with the Bill which the plaintiff filed against them in February 1848, seeking to have the foreclosure set aside, and with the charges of fraud relative to the foreclosure which is set up. But even if he knew nothing of this until after the auction-sale, he had met the same charges from the plaintiff during the Act IV proceedings which took place in July 1847, on his, in part, attempting to obtain possession of the mortgaged premises. To sell in such a way as would relieve himself from all responsibility with regard to these, and at the same time, would put a very large amount of money in his pocket shielded by the secrecy of his agreement with McArthur from the chance of being called to account for it, was

doubtless his main object, in effecting the arrangement of a sale by default, while McArthur, to obtain the Collector's clear title, was ready to connive at his friend's concealment of the real amount of consideration-money, and did actually stand by him in this respect, until after the suit for reopening the foreclosure had been dismissed as against him, McArthur, in the Supreme Court. It was only after this had taken place that he turned round and made the disclosures, which are contained in his deposition before the Master sworn on August 19th 1854. It seems, to me in view of the facts as they present themselves to me, that the plaintiff has entirely made out a fraudulent contrivance between Abbott and McArthur, to deprive him of his rights to the lands in suit on the surplus proceeds of sale. It must not be forgotten that the 2,15,000 rupees, pocketed in secrecy by Abbott, would have been amply sufficient to clear off the whole of the accumulated mortgage debt, and thus to have restored the remainder of the property unincumbered to the plaintiff. I therefore think that the plaintiff has a clear right to redeem the lands, notwithstanding the auction-sale as against Abbott and McArthur.

Now McArthur says that he did not buy on his own account, but did so as agent, and on behalf of the Nawab Nazim, defendant, and it is certain that the three lakhs purchase-money was paid by Messrs. Mackenzie and Lyall, at that time financial agents of the Nawab Nazim, and holding many lakhs of rupees to his credit. The Nawab Nazim himself, in the course of the very unsatisfactory evidence which he has given in this case, has wished to convey the impression that he never either authorized McArthur to purchase the zemindáries for him or certified the purchase after it was made. But he did not venture to deny his signature to the letter of release, purporting to have been given by him to McArthur in respect of this very property, and I cannot say, I have the least doubt the property was bought for, and accepted by, His Highness,

Then comes the question—"Do the equities of the plaintiff which would, under the circumstances of the case, rest upon McArthur as purchaser follow the property, when it turns out that McArthur bought only as agent and not as principal?" I think it is clear that they do. All that McArthur got, as against the Rajah, plaintiff, was the property in suit subject to the plaintiff's right to redeem. He could not get more for a third person than he could get for himself. The plaintiff cannot be in a worse position, relative to the agent's undisclosed principal, than he is towards the agent. The English cases which have been cited before us relative to the liability of a principal for the fraud of his agent, do not seem to me very closely applicable. In Wilde *v.* Gibson, 1 H. of L. car., 605, the purchaser of land sought to set aside the contract of sale on the ground of the fraudulent concealment by the vendor of the fact that a certain *right of way* existed over the land. It turned out that the vendor herself had no knowledge of that fact, and it was doubtful even whether the agent who conducted the negotiation of sale, on her behalf, had ever possessed such knowledge. Certainly no fraudulent intention was involved in the concealment. The plaintiff had, moreover, made no enquiry of the agent as to title, and had completed the transaction by payment, and taking possession before he came to Court for relief. The House of Lords merely held that a contract of purchase, perfected by conveyance and possession, could not be set aside as against the vendor, except on the ground of actual fraud. It further held that the allegations of the Bill would not be supported by showing fraud on the part of the agent only. There was no question before the Lords as to the substance of the subject of conveyance, or as to whether the plaintiff was entitled to compensation in respect to its incompleteness. Most of the other cases belong to a different class. Whenever a defendant is sought to be made liable in damages for the consequences of a misrepresen-

tation, it must be, because the occurrence of the fact, contrary to the representation, either amounts to a breach of contract, or is referable to personal fraud in the defendant himself and therefore it may well be said that, in an action for damages, the principal is not responsible for the fraud of his agent, unless the agent's fraudulent acts were done with the scope of the authority imparted to him the principal. Cornfoot *v.* Towke, 6 M. and W., 358 ; Omrod *v.* Slath, 14 M. and W., 651 ; Udel *v.* Alterton, 7 H. and M., 187, are all instances of suits for damages, and do not bear upon the question, whether a principal can, through the hand of his agent, take land free from the mortgagee's equities, when the agent by reason of his conduct could not have done so himself. The present case seems rather to resemble those in which notice to the agent is held to be constructive notice to the principal, so as to fix him with a trust, or a burden relative to the subject of purchase, which without notice, he would have escaped.

In Dressor *v.* Norwood, 11 Jn. N. S., 851, and 17. C. B. N. S., 466, the Court of Exchequer Chamber held that " if a purchaser's agent buys goods on behalf of his principal from a factor, and such agent has notice at the time, no matter by what means, that the goods are not the goods of the factor, the knowledge of the agent must be held to be the knowledge of the principal, " and the effect of that vicarious knowledge was to deprive the principal of the benefit of set-off which ignorance of the real state of things would have enabled him to make against the factor. As the agent, had he made the bargain for himself, could not by reason of his actual knowledge of the facts have availed himself of such set-off to the detriment of the real vendor, so his principal, although ignorant, could not be in a better position. Similarly, in the present case, because the fraud of the agent in effecting the transaction would, if he had been dealing on his own behalf only,

have been sufficient to lift the barrier of the Act, and to let in the plaintiff's equities, therefore his principal also is not entitled to claim the protection of the Act, but must take the bargain in the same condition, and with the same incidents, as if he himself had committed the fraud connected with it against the plaintiff. Therefore, as I have already said, it seems that the Nawab Nazim, by McArthur's purchase took the land which is now in suit subject to the plaintiff's right to redeem.

The Nawab Nazim's ownership extended at least from April 1848 to September 1851, for it does not appear that either McArthur's conveyance to Saduck Ally in July 1848, or the *kadavee* of April 1850, was intended to have any other effect than to change the name in which the property stood, and during those four years nothing occurred to alter the relative position of the plaintiff and the Nawab Nazim, that is, position of mortgager and mortgagee respectively.

The next important question, then, is, what was the true aspect of the alleged conveyance by the Nawab Nazim to Nuzur Ally in September 1851. Nuzur Ally maintains that it was a *bonâ fide* transfer to him for valuable considerations, and that at the time it was executed, he had no notice of the plaintiff's rights or of the facts out of which they are supposed to spring. On this ground he contends that whatever might have been the plaintiff's requisites against the Nawab Nazim, he (Nuzur Ally) takes the property discharged of them, or is entitled to claim the benefit of Act I of 1845. It appears to me sufficiently clear that, on the evidence, the kabala of 15th September 1851, was executed either by, or on behalf of, the Nawab Nazim, and that Nuzur Ally got possession under it; but I am not satisfied that any consideration for it passed from Nuzur Ally or any one else to the Nawab Nazim. Nuzur Ally admits in his evidence that he did not pay money for it. He says that at the time of the purchase the

Nawab owed him and Saduck Ally, on joint account, a balance of some six lakhs of rupees, in respect of an Imambara, Toshakhanah and Gaokhana, which they had built for him, and other expenses which they had been put to at or on his behalf, and he states that these accounts were adjusted, signed, and filed in the Nizamut Sheristá before the kabala was executed, and that the balance to the extent of three lakhs was taken as the considerations for the kabala. He afterwards added—"The Dewan took the accounts to the Nawab ; I did not ; I was present when the Dewan showed the accounts to the Nawab. He read it to the Nawab in my presence. This reading took place before the kabala was written ; I got no receipt for these accounts from the Nawab ; they were my account books ; therefore I did not give them up after the money was paid ; " and he explained, on re-examination. "The Nawab Nazim, Anam Ally, Major Laing and others suggested the purchase. I acquiesced, because I thought I could not get my money otherwise." It is possible that this story may be to some extent a true one, but none of the evidence which ought to be readily forthcoming, if it is so, has been placed before us to corroborate it. The Nawáb Nazim was not asked a single question about this alleged settlement of accounts in his presence. What he would have answered if he had been, may perhaps be gathered from the circumstances that he refused emphatically to "admit that there was ever a sum of five lakhs and thirty odd thousand rupees or anything like it due by me to Nuzur Ally Khan, either in his own right, or as claiming to represent Saduck Ally Khan." Some books of accounts of Saduck Ally Khan, one of which was said to contain the settled account relied upon, were put in ; and one Bejoy, a book-keeper of Saduck Ally, deposed to their authenticity, but the entry of settlement, alleged to have been made in it on the part of the Nawab, was in no way attemped to be proved. Brajo Kishore Mitter, who might have spoken to it, was not called ; nor were any of the many

persons, who must have been present at the time of the occurrence, if it actually took place, and no attempt was made to shew that the alleged liabilities of the Nawab Nazim to either Saduck Ally or Nuzur Ally had any real foundation. Further, Joseph Marian, who was a witness adduced by Nuzur Ally, because he attested the execution of the kabala, from the Nawab, contradicted Nuzur Ally as to the seal having been affixed in the Nawab's presence. He said it was put on by Nuzur Ally himself, when His Highness the Nawab Nazim was not present, and there is no doubt that Nuzur Ally at that time had the custody or control of the seal. The evidence of Nuzur Ally appears to be of very small intrinsic value ; it is as a whole inconsistent and indefinite. I feel it impossible to say on these materials that Nuzur Ally did either on his own account or on that of Saduck or for both, take over the property which is in suit by way of accord and satisfaction of an unpaid debt, or even that the alleged debt ever existed in fact. Mr. Peterson, for Nuzur Ally, applied to us, as he also had done to the Court below, asking to be allowed to supplement his case by the production of further evidence on this point. The Court of first instance refused this application, and, as we think, rightly. We also refused the like application made to us. Nuzur Ally has had ample opportunity during the protracted proceedings in this case for bringing into Court all the evidence which he now, by his counsel, expresses himself desirous of procuring ; and nothing can be more hazardous in this country than to allow a party to a suit, after the place of pressure has been discovered by actual trial, to bring forward fresh evidence for the purpose of meeting the exigency. In this state of things, I am of opinion that, Nuzur Ally failed to show consideration for the conveyance of the property in his name, and, consequently, that he, and those for whom he holds, must be treated as standing in the position of volunteers, taken from the Nawab Nazim. They therefore

cannot be in a better position, relative to the plaintiff than the Nawab himself, and like him cannot shield themselves from the plaintiff's right to redeem.

On this view of the facts it becomes unnecessary to determine whether Nuzur Ally, at the time of the transfer of the property to him, had such notice of the plaintiff's right against the Nawab, as would deprive him of the protection which a Court of Equity would extend to a purchaser for value without notice in the case of a private purchaser. However, I will add that to my mind, Nuzur Ally's own witnesses clearly establish that he was, at that time and long before, fully cognizant of the plaintiff's reiterated assertions of his right to redeem against Abbott and McArthur, and, lastly, against the Nawab Nazim, although I do not think it is shown that he was aware of the fraud of Abbott and McArthur which has rendered the claims of the plaintiff valid, notwithstanding the provisions of the Act of Legislature. But knowledge of these assertions is enough for the plaintiff's purpose, treating the transaction as private alienation. If a man buys in the face of hostile claims, he runs the risk of those claims eventually turning out to be well founded, whether he, at the time, honestly thinks he has reason to disregard them or not, he cannot afterwards set himself up as an innocent purchaser without notice. He must stand or fall by the strength of his own right as against that of the opposing claimant. Nuzur Ally has, I think, in this case no advantage against plaintiff which the Nawab Nazim did not possess, supposing the revenue-sale out of the way. But I have said that I consider the revenue-sale to be out of the way, so far as concerns the Nawab Nazim, and it seems to me that the same must be the case with regard to any, taking from him, who cannot support himself upon both valuable consideration, and want of notice.

But even if Nuzur Ally took the property from the Nawab upon valuable consideration either for himself, or others, with-

out notice of any of the facts which support the plaintiff's claim, it may, I think, be questioned whether this Court, ought, under all the circumstances of the case, to say that he took free of the plaintiff's equities.

The view which I have already expressed as to the facts, renders it unnecessary for me to discuss this point at length, and I only now allude to it because it was urged before us with considerable force, by the counsel for the plaintiff, and I think it right to say their arguments have made much impression on my mind.

The protection which, in England, is given to a purchaser for valuable consideration, without notice, simply by non-interference as between the holder of the legal estate and the person who possesses an equity without it is peculiarly the creature of the Court of Chancery; and it is to me difficult to see how it can find practical application in a country where there is no distinction between a legal and an equitable estate. In our Moffussil Courts there is no distinction between legal right and equitable right to property. There is but one kind of proprietary right, call it legal or equitable as you choose, which is recognized by the Court; it is an entity not divisible into parts, or aspects. Now, I apprehend, that whenever a Court is free to look at all phases of a suitor's right equally, and is not obliged to separate it into portions for the application to them of different laws respecting them, this primary rule comes into operation, namely, that one person cannot pass to another a larger right in property as against a third person, independently of that third person or his behaviour, than that which he himself possesses. Justice, equity, and good conscience regarding the three parties alone can hardly lead to any other principle of decision, although, perhaps, expediency and motives of public policy may do so. If we persued the plaintiff's rights against Nuzur Ally by this clue, the result would depend upon the conclusion to which we should come

as to the amount of the proprietor's rights residing in the Nawab Nazim as against the plaintiff at the time when he passed the property to Nuzur Ally. And in this investigation the most important element of consideration would be the fact that the Government has the statutable power, by a sale on non-payment of revenue, to convey to the purchaser the fullest rights of ownership in the property sold, and that this power was exercised in good faith, so far as Government is concerned in this case. As I have already said, I do not propose now to discuss this matter. Considering, however, that the conveyance from the plaintiff to the defendant was in the form of an ordinary English mortgage deed, and that the mortgager's rights alone were intended to be passed by it, and considering further that the plaintiff has, on the facts, succeeded in passing beyond the revenue-sale, and in fastening on the Nawab Nazim the purchaser thereunder, by reason of the fraud of the transaction, his equity of redemption, and so put him precisely in the position of a mortgagee, and I am not prepared at present to hold that Nuzur Ally, whose purchase was made after his vendor had been made a party to the suit in the Supreme Court (subject to his coming within the jurisdiction), a suit to which this is in some sense supplementary, can maintain a clear title by saying that he purchased for value from the Nawab Nazim and owner's full right of property without notice of a third person's equities.

Thus, on the whole, as it seems to me in whatever light this case is viewed, Nuzur Ally, the present possessor of the property which is sought to be redeemed, clearly holds it subject to the plaintiff's unqualified right to redeem. The judgment of the Court below is, therefore, in my opinion, right, and ought to be affirmed with costs. It does not appear whether or not the Judge has yet given any directions as to the mode in which the accounts are to be taken, and we need not consider this point now, as it has not been brought before us in

appeal. But I think it may not be useless to observe that this matter will need very careful handling, for the relations between the accounting parties are not very simple, and it must be remembered that every assignor of a mortgage who takes without the consent of the mortgager, takes, of course, at his own risk, and therefore subject to the state of accounts between the mortgager and his assignor.

Mr. Justice Bayley.—The judgment of Mr. Justice Phear is so full as to the facts and as to the conclusions to be drawn from them that it is not necessary for me to do more than give very briefly my view of this case.

In respect to the earlier proceedings I need only say, that, when the Zillah Judge, on the 26th November 1860, dismissed plaintiff's suit, because, in his opinion, there was no power to set aside the Government sale for arrears of revenue, I held that the suit of plaintiff was not to set aside that sale, but to have his title declared to the equity of redemption upon the allegation that the transactions which led to and followed the Government sale, by which plaintiff was held to have lost his right, were *all in fraud*, and that, therefore, no title was passed, of which the purchasers could avail themselves, to exclude plaintiff's right of equity of redemption.

I also held that there was a sufficient *primâ facie* case made of this allegation of plaintiff being correct, and that as no one ought to be allowed to *take advantage of his own fraud*, even under title from a Government sale for arrears of revenue, the case ought to be remanded to try this allegation of plaintiff, and to try how far, and as to what parties' fraud vitiated the subsequent acquisitions of the property in suit, and thus how far the plaintiff's right to a declaration of his equity of redemption as against the defendants, might still exist, notwithstanding the Government sale.

This view having been upheld by the Judicial Committee of Her Majesty's Privy Council, the case has been tried in the

Zillah, and the Judge having decreed plaintiff's case, and defendant having appealed, it remains for us to decide that appeal. As to Abbott, I think, on the whole evidence and on the facts, and for the reason so fully set forth by Mr. Justice Phear on this point, that Abbott's dealings with the Debs were really in fraud, and thus, still subject to the Rajah's equity of redemption. No fair notice was originally given to the Rajah of the dealings of Abbott with the Debs or of the earlier subsequent transactions with McArthur. I think, too, that it is, on the whole, shown that Abbott with means to pay Government revenue for the instalment, for the non-payment of which the estate was sold, defaulted, and that he did so with the fraudulent design of having the chance of letting the estate go at a low price, which it did, for Rs. 85,000, while he had the prospect of receiving from McArthur some large portion of the high price of three lakhs under the agreement between the two. Further, I am of opinion that, with the credible evidence on record, that they were "great friends," and McArthur's brother was Abbott's assistant on the spot, it is unreasonable to believe that there was not an understanding that this secret agreement should, by means of a sale brought about by this fraudulent default, result in pecuniary benefit to both Abbott and McArthur, and this, too, to the exclusion of the plaintiff's right of equity of redemption which they thought would be extinguished under a Government sale for arrear of revenues, and so give Abbott and McArthur a free estate under the superior title of a Collector's sale certificate to pass on to the Nawab Nazim, at a price far higher than the real one, or that which the property under any other title would be likely to realize.

As regards Abbott and McArthur together, the agreement between Abbott and McArthur and the deposition of the latter are, I think, admissable, as evidence under the circumstances set forth by Mr. Justice Phear. That agreement is in

my view, one of a character which does not indicate *bonâ fides;* for the ordinary purpose of bidding at a Government sale, what necessity was there for such an agreement? If Abbott defaulted from (what he alleged was) the poverty of the resources of the property, why should McArthur, who refers to the Collector for information as to the estate in his letter of the 3rd April, and *not* to Abbott, enter into any agreement with Abbott at all?

Again, if McArthur had made up his mind to give three lakhs, why should he enter into any agreement with Abbott? Further, Abbott, if acting in good faith, either could or could not pay the revenue, and could have got off his bad bargain of the property (which it is urged in argument was his only object in default) by the simple means of his inability to pay, and his default and sale would follow accordingly, *quite irrespective* of McArthur or any one else. McArthur's deposition also illustrates the character of the agreement.

As to McArthur's it is hardly possible to my mind to read McArthur's dark apparently objectless agreement in connection with the facts on evidence without a fair legal inference of fraud.

Both knew of plaintiff's mortgage with the Debs. Both, however, by a pre-arranged default by Abbott and by the agreement clearly covenanted and expected to benefit pecuniarily, if McArthur through the acts of Abbott, by the sale got the estate free of the equity of redemption existing in plaintiff. An equity of which McArthur's relations with Abbott and the position of his own brother Campbell McArthur, as Abbott's assistant, and the litigation in the late Supreme Court must have made them aware.

But irrespective of the equity suit in the late Supreme Court, it is impossible for me to say with reference to the instructions accompanying the transmission of the Bank notes to Midnapore for the purchase by McArthur of the property,

which instruction contained such unusual suggestions for secrecy, taken in connection with McArthur's letter to Mackenzie Lyall & Co., stating that the *cost price*, of the estate was Rs. 85,000, and his letter to Dewan Sitanath that the cost price was Rs. 200,000, that McArthur could have acted otherwise than in fraud. And, further, this fraud while it directly costs the Nawab Nazim Rs. 2,15,000, more than he should have had to pay to McArthur, being clearly by his letter of the 3rd April to the Collector (and by other evidence of the Nawab Nazim's agent) did not at all less effectually (though less directly), fraudulently get rid of the plaintiff's equity of redemption by the title so obtained through a Collector's sale. Lastly, but not least, is the clear misappropriation of Rs. 2,15,000 by Abbott less a large commission to McArthur and Mackenzie Lyall & Co.

I think, then, that Abbott and McArthur's acquisition of the property were both tainted by fraud as well in regard to the plaintiff as to the Nawab Nazim, and that they could not, under the system of equity, justice and good conscience of our Courts, avail themselves of that fraud to acquire the usually superior title which is found by a Government sale for arrears of revenue when not brought about by such fraud.

As regards the Nawab Nazim, the deposition of His Highness is intended to be to the effect that he knows nothing of the purchases. But the whole tenor of it is so unsatisfactory in its characteristic of general want of memory of all that it is important and likely that His Highness should have remembered that I do not trust it *for that reason*. But, irrespective of that reason, it is difficult to believe that the Agents to the Governor-General would never speak to His Highness, on and after his majority, on his larger landed properties, supposing even the evidence on the record is not *legal*, evidence to show the Governor-General's Secretary to be in correspondence with the Governor-General's Agent, or they with

other public officers, on the subject of His Highness's landed property.

Or if the Governor-General's Agent had acted so, it is not likely that the Dewan, Sitanath Bose, in general charge of the Nizamat affairs, should not speak to His Highness of those proceedings. Further Saduck Ally, as superintendent of the kitchen, and Nuzur Ally as superintendent of *private purse*, would assuredly have spoken to him on the subject, for they are, both of them in oriental life, in situations of confidence, if not of intimacy. Further, Michael's and Marien's depositions show that Saduck Ally and Nazur Ally were confidential servants, and the fact of these two accompanying His Highness to Alipore on his visit to the Governor-General also indicates it.

Lastly, it is not likely that *each and all* of those persons should have kept His Highness in such ignorance of the Midnapore and Sunderbun estates being his, as to justify His Highness deposing on the 14th July 1860:—"I was not aware that the Midnapore estate was held *benamee* by Saduck Ally for me. *I am not even aware now.* They did not (khubbur) report to me what they did?" Moreover, if His Highness cannot, as he says now, recollect anything on the subject, it will be legally correct to prefer the direct evidence of those who can.

That the Nawab Nazim was not aware of the fraud that Abbott and McArthur practised as to himself, *viz.*, that the thing which cost really Rs. 85,000, and was bought at that price for His Highness by his agent, McArthur, should be charged to His Highness as costing Rs. 3,00,000, is probable, for it was not intended that that fraud should go beyond the concoction of it, that I hold the Nawab Nazim was aware that there was in plaintiff an equity of redemption. This is shewn from the proceedings in the Deb's foreclosure suit, to which he was a party. Again if the Nawab Nazim had never

given the release, he could and ought clearly to have denied his signature thereto. He did not do so. His Highness must then, I think, be bound by McArthur's acts as the acts of his agents, and the property is consequently, in my opinion, affected by fraud, and still therefore subject, notwithstanding the Collector's sale, to the plaintiff's equity of redemption.

As regards Saduck Ally, as to this individual, I quite agree with Mr. Justice Phear that he is an admitted *benamee* for the Nawab Nazim, and since his death his individual case requires no further consideration separately from that of Nuzur Ally. As regards Nuzur Ally, Nuzur Ally's real case is that he knew nothing of plaintiff's equity of redemption, and that he is an innocent purchaser, without notice for valuable consideration, the consideration not being cash, but payments of a debt due by the Nawab Nazim to Saduck Ally, whom Nuzur Ally represents either as executor or partner, for he puts forward both claims. Now Marian, a servant of thirty years' standing in the Nizamut, depose that Nuzur Ally was one of the three (Saduck and Anam being the other two) who were the *chief managers* of the affairs of the Nawab Nazim; looking to Michael's evidence as to Nuzur Ally's relation to the Nawab Nazim's affairs, and to Marian's evidence as to Nuzur Ally being "concerned in the said private arrangement," and having made it, it is not likely that Nuzur Ally should have been ignorant of the plaintiff's rights of equity of redemption.

But *irrespective of this*, what Nuzur Ally *really has to shew* is that he gave *valuable consideration*. No accounts duly kept and proved are adduced to shew this. The money was said to be due for preparing an Imamberrah, Toshakhanah and Gaokhanah (*i.e.*, mosque, treasury and cattlestable) and for sundries; while moreover on the one hand, petty details of trivial entries of a rupee are entered, no details of the work forming the *main items of the basis of the valuable consideration*

under which Nuzur Ally seeks to be free from encumbrance of the plaintiff's equity of redemption, are shewn us. Not one likewise of the many persons who must have been employed, and must have received some of the money which is said to have been expended by Saduck Ally on behalf of the Nazim for these matters is called or examined; and while Marian's evidence and the Nawab's (however unsatisfactory the latter may be) go to show no such debt of the Nazim to Saduck Ally. We have positively *no reliable documentary evidence* on the other side, nor anything but these two unproved accounts which were placed before us. Next, taking Bejoy's evidence as the best for Nuzur Ally's case, we observe that the books are shown to have been kept in the most loose and unreliable manner.

There is certainly Major Laing's letter of the 29th October to the Collector of Midnapore, stating that the Nawab Nazim had written to Major Laing that he had sold the Midnapore estate to Nuzur Ally, but the letter is not produced, nor is there any deposition of Major Laing or other evidence than the copy of the letter.

It may be true that the Nawab Nazim did so sell, as for valuable consideration to Nuzur Ally; but I cannot consider that in the way and from the extent, evidence is adduced before us on *this most important point*, after full time to adduce all that was available, there is any legal proof of such sale as one for *valuable consideration without notice.*

Concurring generally in the views expressed by Mr. Justice Phear of the facts of the case, and in the opinion that the purchases of Abbott and McArthur, and the Nawab Nazim and Nuzur Ally are subject to the plaintiff's right of equity of redemption, I would affirm the decision of the Zillah Judge of Midnapore, now under appeal to us, and dismiss both appeals (423 and 55) with all costs.

XII-A/37

The History of the
Midnapore Raj
by Rajah
Mahendra Lall Khan

Sub - History

P— 37